

THE
ESTATES PARTITION ACT

BEING

ACT No. V of 1897

WITH

NOTES, ANNOTATIONS, IMPORTANT DECISIONS OF THE BOARD
OF REVENUE, HIGH COURTS AND RULES MADE BY THE
BOARD OF REVENUE WITH THE SANCTION OF
THE GOVERNMENT OF BENGAL.

BY

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Reader, Judge's Court, Mymensingh.

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1899.

ERRATA.

PAGE	LINE				
37	35	<i>for</i>	"the"	<i>read</i>	"this."
54	3	"	"where"	"	"when."
"	29	"	"receipt"	"	"receipts."
68	15	"	"Collector"	"	"Collector."
72	23	"	"apportunity"	"	"opportunity."
78	27	"	"partition"	"	"portion."
98 <i>cancel</i> lines 30-33.					

PREFACE.

THE author begs to place this annotated Edition of the Bengal Partition Act (V. of 1897, B. C.), before the public, with the hope that it may meet a long-felt want. No pains have been spared to make the work really useful to the Bench and the Bar, as also to others who may have any thing to do with the partition of Estates in Bengal. The author, in his Introduction, has given a brief historical sketch of the past and present legislation on the subject. All available decisions (including the latest) of the Board of Revenue and of the High Courts bearing on the subject of partition, have been carefully inserted in their appropriate places. Rules of the Board Revenue together with the instructions relating to them have also been appended. The author shall feel amply repaid if the work is found useful by the public, and shall feel obliged for any suggestions or corrections which may be sent to him.

AUTHOR.

MYMENSINGH.

December, 1899.

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INTRODUCTION.

A BRIEF HISTORY OF THE LAWS RELATING TO THE PARTITION OF ESTATES FROM THE TIME OF THE PERMANENT SETTLEMENT DOWN TO THE PRESENT PERIOD.

When the right of property in the soil was explicitly declared, by the Regulations of the Permanent Settlement, to be vested in the Zemindars, independent Talookdars, and other actual proprietors of land paying revenue to Government, in the provinces of Bengal, Behar and Orissa, it was also declared, by Section 9, Article VIII., and Section 10, Article IX. of Regulation I of 1793, that they might dispose of the whole or any portion of their properties in any way they thought fit subject to the conditions of notifying the same to the Collector. Section 9, Article VIII., provides that in order "that no doubt may be entertained, whether proprietors are entitled, under the existing Regulations, to dispose of their estates without the previous sanction of Government, the Governor-General in Council notifies to the Zemindars, independent Talookdars, and other actual proprietors of land, that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary rights in the whole, or any portion of their respective estates without applying to Government for its sanction to the transfer." All such transfers were to be held valid, provided that they were conformable to Hindu or Muhammadan law, according to the religious persuasion of the parties, and that they were not repugnant to any Regulations at the time in force passed by the British Administration, or that they might afterwards enact. The next Section 10, Article IX., enacts that "it is essential that a Notification should be made of the principles on which the fixed assessment charged upon any such estate, will be apportioned in the

INTRODUCTION.

event of the whole of it being transferred by public or private sale, or otherwise, in two or more lots, or of a portion of it being transferred in one or two or more lots, or of its being joint property, and of a division of it being made among the proprietors." As the Government might sustain a considerable loss of revenue by disproportionate allotments of the apportionment of it if left to the proprietors, the latter were required to notify to the Collector all such transfers by sale, gift or otherwise, or divisions made among the proprietors in order that the fixed *Jama* assessed on the whole might be apportioned on the several parts of it, and that the names of the proprietors of each share might be entered on the public registers, and that separate engagements might be taken from them. If the parties to such transfers or divisions failed to notify them to the Collector, the whole of the original estate was to be held liable for the discharge of the whole revenue as if no such transfers or divisions had taken place. From these Articles it is clear that no limits were then prescribed for the Sadar Jama for which an estate could be partitioned.

On the very day on which the Permanent Settlement Regulation I of 1793 was passed, Regulations were also enacted for the purpose of enabling proprietors to apply to the Collector for partition of their estates, and **Regulations VIII. and XXV of 1793.** rules were prescribed for carrying out such partitions. These rules were contained in Regulations VIII and XXV of 1793.

The Permanent Settlement was, in many cases, concluded for large estates or tracts of land. Sometimes whole Parganas consisting of several mahals, were included under one engagement for the payment of a certain amount of revenue, and all the lands so included were held jointly liable for the payment of that revenue.

With such large estates it was deemed desirable to give every facility for sub-division of them and for enabling the

co-proprietors to separate their interests and their liability or the State revenue.

It was soon found, however, that the unrestricted subdivision of estates and separation of financial responsibility were being carried on to an extent that was thought to be dangerous to the security of the revenue, and a Regulation was therefore passed in 1807, on the unanimous suggestion of the Board of Revenue (Regulation VI of that year) enacting that no partition should be allowed which would have the effect of creating a new estate with a Sadar Jama of less than Rs. 500.

The restrictions, imposed by Regulation VI of 1807, did not last long. The measure was quite inoperative on account of its too high limit on the *Jama*. Within 3 years Regulation V of 1810 was passed repealing Regulation VI of 1807 and allowing partition to be made of estates, however small. No limit was imposed on partition of an estate according to Sadar Jama, and it became a very salutary measure.

The reasons for removing the restrictions imposed by Regulation VI of 1807 were stated in the preamble to Regulation V of 1810, thus :—

“Experience having shown that the existing rules for the
 “division of landed property paying revenue to Government
 “are in many respects defective; inasmuch as they do not
 “sufficiently provide against the artificial delays and impediments which are frequently thrown in the way of the process
 “of the division by some one or more of the parties concerned,
 “who may be interested in so doing; or, (as often happens)
 “by the officer employed in conducting the details of that
 “process; nor effectually secure Government from the loss
 “resulting from fraudulent and collusive allotments of the
 “public revenue on the shares of estates when divided; and
 “there being moreover reason to believe, that the restriction

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“which has been laid on the partition of small estates by Regulation VI of 1807, has been and is the cause of considerable injury to numbers of individual sharers in such estates; thereby inducing a sacrifice of private rights, which the degree of public inconvenience arising from the minute division of landed property does not appear to be of sufficient magnitude to justify or require: with a view therefore to remedy these defects, to expedite the division of landed property paying revenue to Government, when duly authorized by the provisions of Regulations I and XXV of 1793, and their corresponding Regulations for Benares, and for the ceded and conquered provinces; with due regard to the permanent security of the public revenue, whatever be the amount thereof; and to obviate the injury to which individual sharers are liable in the case of a joint estate being brought to sale for balances which may have arisen from the default of their coparceners during the interval while the process of division is pending, the following rules have been enacted.”

The different Rules and Regulations on the subject were consolidated in Regulation XIX of 1814, which, with slight modifications, continued in force till the Bengal Council Act VIII of 1876 was passed.

**Regulation XIX
of 1814.**

In the year 1875 the Hon'ble Mr. Dampier, then Senior Member of the Board of Revenue, introduced a Bill in the Bengal Legislative Council for the amendment of the Partition Law. It was proposed in Mr. Dampier's Bill that no partition should be made which would result in the formation of a separate estate, liable for a revenue of less than Rs. 20, unless the proprietor agreed to redeem the revenue. The Bill of 1875 was passed by the Bengal Council on the 8th April, 1876, but it was vetoed by the Government of India on the ground that the proposal to redeem the Government revenue in the case of estates having a revenue of less than Rs. 20 was opposed to the financial interests of the country, for it was thought

Bill of 1875.

INTRODUCTION.

that if such redemption were allowed a time might conceivably come when all Bengal would become revenue-free.

Mr. Dampier's Bill having been vetoed by the Government of India, another Bill was introduced in August of 1876, which **Act VIII of 1876.** imposed no restriction on partitions except this, that, when a new estate was created with a Sadar Jama of not more than one rupee, the proprietor was bound to redeem the revenue by paying its capitalised value in a lump sum. This Bill was passed, and became the Act VIII (B. C.) of 1876.

A bill to amend Act VIII of 1876, with a view to provide that no separate estate, liable for an annual amount of revenue less than Rs. 10 should be created under the provisions of the Act, was before the Bengal Legislative Council on the 16th December, 1882; 1st December, 1883; 12th January, 1884. A question was then raised, by the Hon'ble Hurbans Sahai, of the right of Government, under the terms of the Permanent Settlement, to impose any such limit. The Bill was withdrawn on the 23rd February, 1884, partly because it aroused a strong feeling of opposition, and partly because it was thought that the relief, sought to be given by it, would, to some extent, be afforded by the provisions of the Tenancy Bill, which would, it was supposed, simplify the carrying out of partitions.

THE PRESENT ACT.

The Bengal Act VIII. (B.C.) of 1876 was in force up to this time when, on the 11th April, 1896, **Act V of 1897.** the Hon'ble Mr. Finucane introduced a Bill in the Bengal Legislative Council for amendment of the laws relating to the Partition of Estates. The reasons for introducing the Bill are stated in the following extracts from the Statement of Objects and Reasons. They run thus:—

“The primary and chief object of this Bill is to simplify, cheapen and shorten the procedure for effecting partitions of estates in Bengal. The present law for the partition of estates, which is contained in the Partition Act, VIII (B. C.) of 1876, has been found by experience to be defective, in that it allows excessive and unnecessary opportunities for making objections and delays at almost every stage of proceedings. Parties who wish to obstruct the partition, take advantage of these opportunities to such an extent that partition proceedings are protracted to an intolerable length, and are excessively expensive and harassing to the proprietor applicants, who, when entitled to partitions, should have the means of getting them effected within a reasonable limit of time and at a moderate expenditure. The protraction of partition proceedings is also a source of irritation, harassment, and injury to the tenants of estates under partition; for, though under the present law the tenants are not bound by anything entered in the partition papers, it has been found, as a fact, that partition proceedings have been abused for the purpose of effecting illegal and inequitable enhancements of rent. The Bill aims at applying a remedy to these evils—(1) by defining and limiting the stages of the proceedings at which objections and appeals may be made, without, at the same time, taking away or curtailing the right itself to make objections or urge appeals at the proper time; (2) by providing for the making of a survey and the preparation of a record-of-rights and existing rents unless a previous measurement has been made, or the proprietors themselves file measurement papers admitted to be correct, so that there may be an authoritative finding on the assets on which the partition is to be based, and that all parties concerned, including the tenants, may have an opportunity of knowing what is being recorded relating to them and of urging objections, if they have any.

“A secondary, but still very important, object of this Bill is to impose some limit on the endless divisibility of res-

possibility for land revenue to the State allowed under the present law.

“Under the law as it stands, the only restriction on the creation of petty estates is that contained in Sec. 11 of Act VIII (B. C.) of 1870, which directs that no partition shall be carried out if the separate estate of any of the proprietors would be liable for an annual revenue of not more than one rupee, until the proprietor of that separate estate agrees to redeem the revenue assessed upon it. The result is that the multiplication of petty estates entered in the Collector's Registers has, in some districts, gone on to such an extent that it is believed to be likely to become dangerous to the security of public revenue.

“This divisibility and great multiplication of estates is believed to be bad for the proprietors and bad for their tenants, besides being dangerous to the public revenue, and imposing an unnecessary amount of labour and expense on the administration, without any proportionate benefit to any body.

“For these reasons it is thought desirable in the interests of the proprietors, their tenants and the general public, that some restriction should be put on the partibility of estates to be borne as separate units in the Collector's revenue-rolls. The restriction, proposed in Section 10 of the Bill (Section 11 of the Act) is, that partition shall be refused if the separate estate of any of the proprietors would be liable for an annual amount of land revenue not exceeding Rs. 100. The particular limit of Rs. 100 is put forward tentatively, and may be too high. Some of the facts above stated suggest the desirability of imposing an absolute prohibition on the subdivision of estates below a certain limit. But it is not thought necessary to go so far. The limit proposed only affects the separation of responsibility for payment of Government revenue, and does not affect the right of proprietors to dispose of the whole or any portion of their estates as they think fit,

or their right to obtain separate possession of any portion thereof. It is expressly provided that any Civil Court, which has made a decree for partition or for the separate possession of a share of an undivided estate paying revenue to Government, may execute such decree, in the same manner and subject to the same conditions as in the case of a revenue-free estate, but the joint and several liability of the entire estate is not thereby to be affected, unless such partition is made or separate possession given by the Collector under this Bill.

"An objection that may, with some apparent show of reason, be urged against the proposals of Section 10 (Section 11 of the Act) is that, if the power of partition is withdrawn from petty proprietors, they will be placed at the mercy of their more wealthy co-sharers and neighbours, but the force of it is nullified by the facts that small co-sharers are protected by the proviso to the same section, and that they can protect themselves otherwise by opening separate accounts or by applying for the appointment of a common manager under Section 93 of the Tenancy Act. Whatever risk of hardship to petty co-sharer there may be under the Bill, if there be any, it is as nothing compared to the injury to proprietors and raiyats and to the general tax-payer that is being now, and in a greater degree in the future is likely to be, caused by the microscopic sub-division of estates."

When this Bill was published, it evoked much discussions, and very severe criticisms were made against the limit of Rs. 100 proposed in the Bill, and the introduction of the system of record-of-rights therein.

At the meeting of the Council in which the Bill was referred to the Select Committee, the Hon'ble Rai Eshan Chandra Mittra Bahadur, and the Hon'ble Babu Guruprosad Sen strenuously opposed the rights of the Government to impose any limit to the partition of estates. It was said that the Government was encroaching upon the Charter of the Permanent Settlement by imposing such limits. After much

discussions about that right, the Bill was referred to the Select Committee. On the 3rd April, 1897, the Hon'ble Mr. Finucane presented the Preliminary Report of the Select Committee on the Bill to amend the law relating to the partition of estates. He said :—

“As we have made numerous alterations in the Bill we have presented only a preliminary report, and propose to have the Bill republished. The principal changes which have been made are that we have lowered the limit of partibility of revenue from Rs. 100 to Rs. 20, and we have recast the whole of Chapter V. (now Chapter VI.) regarding the survey and record-of-rights.” The provisions as regards the record-of-rights were altogether dropped.

In the Preliminary Report the Hon'ble Rai Eshan Chandra Mittra Bahadur, and the Hon'ble Babu Guruprasad Sen recorded their dissentient notes as to the limit of Rs. 20 which was agreed to by all other members of the Select Committee.

When the Report and the Bill as amended were republished there were still objections raised as to the limit of Rs. 20, and in the Final Report the Select Committee laid down that partition of an estate shall not be allowed.—

- (a) if the annual amount of land revenue for which the separate estate of any of the proprietors would, after partition, be liable, would not exceed Rs. 10, or
- (b) if after separation of the applicant's interest, the annual amount of the land revenue for which the separate estates of the remaining proprietor or proprietors would be liable, would not exceed Rs. 5.

In the meeting of the Bengal Legislative Council, held on the 28th August, 1897, the Final Report of the Select Committee was considered, and the Bill was passed into law.

THE ESTATES PARTITION ACT

ACT NO. V OF 1897.

PASSED BY THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL

(Received the assent of the Lieutenant-Governor on the 11th September 1897, and of the Governor-General on the 23rd October, 1897.)

AN ACT TO AMEND THE LAW RELATING TO THE PARTITION OF ESTATES.

WHEREAS it is expedient to amend the law relating to the partition of estates ;

And whereas the sanction of the Governor-General of India has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions contained in section 12 of this Act amending the Code of Civil Procedure ;

55 and 56
Vict., c. 14.

XIV of 1882

It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY.

Short title, extent and
Commencement.

1. (1) This Act may be called the Estates Partition Act, 1897 ;

[1876, s. 14]

(2) It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal ; and

(3) It shall come into force on the day on which it is first published in the Calcutta Gazette after having received the assent of the Governor-General.

NOTE.—This Act has come into force from the 8th December, 1897, the date when it was first published in the Calcutta Gazette. It received the assent of His Excellency the Viceroy and Governor-General on the 23rd October, 1897.

THE ESTATES PARTITION ACT.

[1876, ss. 2
and 3, modi-
fied.]
Ben. VIII.
of 1876.

2. (1) On, and from that day the Estates Parti-
tion Act, 1876, shall be repealed.
Repeal and savings. But—

(a) this repeal shall not affect the previous operation of the said Act, or any thing duly done or suffered thereunder, or any fine incurred thereunder ;

NOTE.—This clause has been added for saving the past operation of the Act of 1876. Compare Act I of 1868, Section 6 (as amended by Act X of 1897) which runs thus :—

“6. Where this Act, or any Act of the Governor-General in Council, or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect ; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed ; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed ; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

The provision of an Act which creates a new right cannot in the absence of express legislation or direct implication, have a retrospective effect. *Lall Mohan Mukerjee vs. Jogendra Chandra Ray* I. L. R., 14 Cal., 636. Vide also the Full Bench Ruling in the case of *Jagadananda Singh vs. Amrita Lall Sarcar*. I. L. R., 22 Cal., 767.

(b) Where in any pending case an order under section 63 of the said Act was made before the said day, the subsequent proceedings shall, unless all the proprietors request

otherwise, be carried on under the said Act, as if this Act had not been passed :

NOTE.—AS regards the completion under the Act of 1876 of partition proceedings commenced under that Act before this Act came into force, it has been provided that the proceedings may be carried on under the Act of 1876, if an order has been made under section 63, instead of when the later stage has been reached of publishing a notification under that section. It has also been provided that the proceedings shall not be carried on under the Act of 1876 but shall be completed under this Act, if all the proprietors so desire.

Section 63 of the Act of 1876 runs thus :

“ 63. When the Deputy Collector is finally satisfied that the Notification of date for papers before him, whether rent-rolls, deciding the mode of measurement papers, maps, or other partition papers, are sufficient and sufficiently correct to be accepted or adopted for the purposes of the partition, he shall make an order to that effect, and shall fix a day on which to determine the general arrangement of the partition, and shall publish a notification in the manner prescribed by section one hundred and thirty-four, calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and shall serve a notice to the same effect on each proprietor or his agent.”

(c) Subject to clause (b) of this section, all pending proceedings which have been commenced under the said Estates Partition Act, 1876, before the said day shall be carried on under this Act, save that, where in any case the collector has before that day directed that an application for partition be admitted, section 11 of the said Estates Partition Act, 1876, shall apply instead of clauses (a) and (b) of section 11 of this Act.

NOTE.—It has been provided in this clause that where in any case the Collector has, before this Act came into force, directed that an application for partition be admitted, section 11 of the Act of 1876 shall apply instead of clauses (a) and (b) of section 11 of the present Act. This addition makes it clear that the new limits of Rs. 10 and Rs. 5 made in clauses (a) and (b) of section 11 of this Act will not have effect in such cases.

Section 11 of the Act VIII of 1876 runs thus:—

THE ESTATES PARTITION ACT.

11. No application, for the partition of a permanently-settled estate shall be admitted, and if the application shall have been admitted, no

No partition of a permanently settled estate shall be admitted, and if the application shall have been admitted, no partition shall be carried out in accordance with such application, if the separate estate of any of the proprietors would be liable for an annual amount of land revenue not exceeding one rupee, until the proprietor of such separate estate agrees to redeem the amount of revenue for which his estate would be liable, by payment of such sum as the Lieutenant-Governor may fix with reference to the circumstances of such estate."

(2) Any enactment or document referring to the said Estates Partition Act, 1876, or to any enactment repealed thereby, shall, so far as may be, and subject to sub-section (1) of this section, be construed to refer to this Act or to the corresponding portion thereof.

NOTE.—This sub-section has been introduced as providing for references to the Act VIII, of 1876 or former laws, to be construed as references to this Act.

1876, s. 4.] **3.** In this Act, unless there be something repugnant in the subject or context,—
Definitions.

(i) "Board" means the Board of Revenue for the territories for the time being under the administration of the Lieutenant-Governor ;

(ii) "Collector" means the Collector of the District on the revenue-roll of which an estate which is under partition, or which it is proposed to bring under partition, is borne, and includes—

(a) any officer whom the Board generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his functions, in respect of the partition of an estate, and

(b) any officer whom the Board specially vests (as it is hereby empowered to do) with the

powers of a Collector for the purposes of any partition under this Act.

(iii) "Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate ; [1876, s. 4.] (xviii.)

(iv) "Deputy Collector" includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition ; [1876, s. 4.] (xvii.)

(v) "Proprietor" includes every person who is in possession of any estate under partition or any portion of such an estate, or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate ; [1876, s. 4.] (xiii.)

NOTE.—Compare the definition of "proprietor" as given in Bengal Act VII of 1876 and meaning of "proprietor" as laid down in the case of Sukurullah Kazi vs. Bama Sundari Dasi, 1 L. R., 24 Cal., 404.

(vi) "Recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein ; [1876, s. 4.] (xiv.)

(vii) The words "tenure," "permanent tenure," "holding" and "tenant" have the meanings attached to them in the Bengal Tenancy Act, 1885 ; [1885, (New.)] VIII of

NOTE.—In section 3 of the Bengal Tenancy Act (Act VIII of 1885) are contained the definitions of the following terms.

- (1) "Tenure" means the interest of a tenure-holder or an under-tenure-holder.
- (2) "Permanent tenure" means a tenure which is heritable and which is not held for a limited time.
- (3) "Holding" means a parcel or parcels of land held by a ryot and forming the subject of a separate tenancy.

THE ESTATES PARTITION ACT.

(4) "Tenant" means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that person.

[1876, s. 4.
(ii)] (viii) "Applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is liable ;

[1876, s. 4.
(viii)] (ix) "Estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue ;

"Estate" does not include temporarily settled estates which are subject to diluvion. (Board's Proceedings of 18th April, 1889, No. 108, Collection 1, File 302). But see section 11 *post* where no distinctions have been made between a permanent and a temporary settled estate.

[1876, s. 4.
(ix)] (x) "Joint undivided estate" means an estate of which two or more persons are proprietors ;

[1876, s. 4.
(xii)] (xi) "Parent estate" means an estate for the partition of which proceedings are in progress under this Act, or of which the partition has been effected under this Act ;

[1876, s. 4.
(xvi)] (xii) "Separate estate" means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act ;

[1876, s. 4.
(x)] (xiii) "Land" does not include houses or other buildings standing thereon ;

VIII of
1885.
[New.] (xiv) "Rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant ; and "rent payable in kind" means, in money, the amount which would be determined as the

PRELIMINARY.

rent if a commutation were made under section 40, sub-section (4), of the Bengal Tenancy Act, 1885 :

NOTE.—The definition of “Rent” is the same as in the Bengal Tenancy Act, 1885. Section 40 of the Bengal Tenancy Act is inserted at length for facility of reference :—

- “40 (1) Where an occupancy-raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another, either the raiyat or his land-lord may apply to have the rent commuted to a money-rent.
- (2) The application may be made to the Collector or sub-divisional officer, or to an officer making a settlement of rents under Chapter X, or to any other officer specially authorized in this behalf by the Local Government.
- (3) On the receipt of the application the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.
- (4) In making the determination the officer shall have regard to—
- (a) The average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity :
 - (b) The average value of the rent actually received by the land-lord during the preceding ten years or during any shorter period for which evidence may be available ; and
 - (c) The charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges.
- (5) The order shall be in writing, shall state the grounds on which it is made, and the time from which it is to take effect, and shall be subject to appeal in like manner as if it were an order made in an ordinary revenue proceeding.
- (6) If the application is opposed, the officer shall consider whether under all the circumstances of the case it is reasonable to grant it, and shall grant or refuse it accordingly. If he refuses it, he shall record in writing the reasons for the refusal.”

(xx) “Assets,” when used with reference to land, [1876, s. 4. (iii.)]
means—

THE ESTATES PARTITION ACT.

[New.] (a) in the case of land held by cultivating raiyats—the rent payable by them ;

[1876, s. 7.
Para 1,
second
clause,
amplified.] (b) in the case of land which is occupied by a proprietor—the rent which might reasonably be expected to be payable by cultivating raiyats if the land were occupied by them ;

[1876, s. 7.
Exception 2.] (c) in the case of land held on a permanent tenure which was created by all the proprietors of the estate, and which by any law for the time being in force is protected against the purchaser at a sale for arrears of land-revenue —the rent payable by the holder of such tenure ;

[1876, s. 7,
Exception 3.] (d) in the case of land held on a tenure which,

although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure subject only to the payment of an amount of rent fixed in perpetuity, and

is of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the estate or any person deriving his title from such proprietors,—

the rent payable by the holder of such tenure, whether he be known as talukdar, patnidar or mukarrardar or by any other designation ;

[1876, s. 7,
Exception 4,
modified.] (e) in the case of unoccupied land and land forming portion of a village site—such amount, if any, as the Deputy Collector may determine with reference to all the circumstances of the case,

and includes—

[1876, s. 4.
(iii.)] (f) all profits derived out of land by proprietors from trees, rights of pasturage, forest rights, fisheries and all other legal sources ;

RIGHT TO CLAIM PARTITION.

NOTE.—In this clause the word “trees” has been inserted, trees being sometimes a sufficiently important source of profit to deserve express mention.

(*xxi*) “Assets,” when used with reference to an estate, means the assets of all land included in the estate; [1876, s. (iv).]

(*xxii*) “Chapter” means a Chapter of this Act; and [1876, s. (vi).]

(*xxiii*) “Section” means a section of this Act. [1876, s. (v).]

NOTE.—As the measurements under this Act are to be made in accordance with the Bengal Survey Act V of 1875, the legislature has omitted the definition of the word “Amin” which was used in the previous Act, as being unnecessary. The definition of “Lieutenant-Governor” has also been omitted.

CHAPTER II.

RIGHT TO CLAIM PARTITION.

4. (1) Subject to the provisions of this Act, every [1876, s. 8]
Who entitled to claim Partition. recorded proprietor of a joint undivided estate who is in actual possession of the interest in respect of which he is so recorded shall be entitled to claim a partition of the said estate and the separation therefrom and assignment to him as a separate estate of land representing the interest of which he is in such possession.

(2) Any two or more of such recorded proprietors may claim that land representing the interests of all such claimants be formed into one separate estate to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making any such claim.

Rulings.

1. The Partition Act clearly contemplates more than the mere record of the fact of possession on the part of an applicant for partition. He must be in actual possession of the interest in respect of which he is so recorded. If the fact of registration in the Collector's books were by itself to be accepted as suf

ficient evidence of possession to entitle an applicant to claim partition, it would have been unnecessary for the law to declare (as it does) that partition may be claimed by a recorded proprietor who is in actual possession of the interest in respect of which he is so recorded. (Board's Proceedings of 15th January, 1887, No. 106, Collection, 7, File. 4.)

2. In the year 1226 F (1819) a fourteen-anna eight-gundas share of a certain Mouzah was permanently settled. The remaining one-anna twelve-gundas share was permanently settled in 1861. This share was sold for arrears of Government revenue in 1873, and purchased by the plaintiff, who subsequently applied to the Collector for partition under the Butwarra Act. The Collector refused to partition upon the ground that the Act was not applicable to the partition of a Mouzah held jointly by the proprietors of two separate estates. The plaintiff then brought the present suit, to which he made the Collector a party, to obtain a declaration that he was entitled to have his share separated from the fourteen-anna eight-gundas share by metes and bounds, and also for a decree directing a partition of the whole Mouzah into two parts.

Held,—that so far as the plaintiff on the one hand and the owners of the fourteen-anna eight-gundas share on the other, were concerned, the Mouzah could be partitioned, but that such partition would not be binding upon the Government unless by consent. *Ajoodhya Persad versus Collector of Durbhunga*, 1. L. R., 9 Cal., 419.

3. In 1851 an estate was brought under Butwarra under the provisions of Regulation XIX of 1814. At such Butwarra a portion of the estate being land covered with water and unfit for cultivation was not divided, but left joint ~~amongst~~ all the co-sharers, the land revenue payable on account of the whole estate being apportioned amongst the several estates into which the portion divided was split up. Subsequently, on the portion remaining joint becoming dry and fit for cultivation, an application was made by one of the co-sharers to the Collector to partition the same under the provisions of Bengal Act VIII of 1876, but that officer refused to do so, on the ground that the land "did not bear an assessed revenue and was not shown in the Towji."

In a suit brought under the above circumstances to compel the Collector to make the partition, and in the alternative to have it made by the Civil Court, *Held*, that, though the reasons given by the Collector for refusing was an erroneous one, he was not bound to make the partition under the provisions of Bengal Act VIII of 1876, as the land in suit was not liable for the payment of one and the same demand of land revenue, and was therefore not a joint undivided estate within the terms of Section 4, Clause (9) of that Act.

RIGHT TO CLAIM PARTITION.

Held, also, that the word "Estate," as used in Section 265 of the Civil Procedure Code, must not be construed in the same limited and defective sense in which it is used in Act VIII of 1876, but must be taken to be there used in its ordinary signification, and that consequently the plaintiff was entitled to a decree for partition under the provisions of that section. *Chander Nath Nundy, versus Harnath Deb I. L. R., 7 Cal., 153*, approved. The Secretary of State for India in Council *versus Nundun Lall I. L. R. 10 Cal., 435*.

Sixteen-annas proprietor of an estate cannot apply for partition. All the provisions of the Act regarding the apportionment of Government revenue &c., show clearly that no estate can be subject of partition unless it has at least two proprietors (Board's No. 70 A, dated 20th February, 1890.)

If an estate is under the management of a Common manager appointed under Section 93 of the Bengal Tenancy Act (Act VIII of 1885), a co-sharer, if he be not a registered proprietor, is not entitled to apply for partition of his share in such estate. (Board's No. 92 A, dated 1st March, 1894.)

One Ram Kumar Ghose applied for partition of his undivided one anna share in an estate. His application was opposed by his co-sharers, alleging that the applicant was not in possession of the share for which he had been registered under Act VII of 1876 : and that he had purchased this share except some specific lands, having agreed to pay the entire revenue of the share without any deduction being made for the lands reserved. The Lower Court found that the applicant was not in possession of his share in all the lands belonging to the estate : and that there were fair grounds for supposing that a *bona fide* dispute existed as to the title of the applicant in some lands of the estate : on this the Collector entertained the objection and disallowed the partition. On appeal, the Commissioner *held*, that the burden of proof in this case was on the respondents, *i. e.* so far as was necessary to establish the fact of a *bona fide* dispute. The applicant got his name registered as proprietor of one-anna share. It was a mistake on the part of the Deputy Collector to say that it was an *ex-parte* registration : because all the other sharers appeared subsequently and had their shares registered without any allusion to their title to any portion of the one-anna share. The Commissioner, therefore, held that as at that time no such title existed, and as it was not alleged that any subsequent alienation took place the claim made was a fraudulent one and that there were no *bona fides* in the transaction. He therefore reversed the Lower Court's decision and directed the partition to proceed. The Board, on appeal by the objectors, was of opinion that when they did not prove by any documentary evidence that a *bona fide*

dispute existed, or that the applicant was not in possession of all the lands, there were no grounds for staying the partition proceedings and the Board accordingly confirmed the Commissioner's order. (Board's No. 188 A, dated 29th March 1888.)

7. Holders of permanently-settled Estates which are subject to diluvion are not entitled to claim partition. (Boards' Proceedings of 18th April, 1889, No. 108. Collection 1. File 302.)
8. An application having been made by a Co-sharer for partition of his 3 annas 15 gundas' share from the 12 annas 5 gundas' interest of the other co-sharers in the same *Mahal*, the Collector found that the *Mahal* was joint with another estate bearing separate number in the *Toreji* and that it had been illegally separated from the same. The Collector, under Board's letter No. 293 dated 4th September, 1838, "that an illegally separated estate can not be brought under partition" rejected the application for partition. The Commissioner having confirmed that order an appeal was preferred to the Board. The Board held that by the definition of the word "Estate" as given in the Act VIII of 1876, the order of 1838 was no longer applicable and the application for partition should have been entertained. The Board also said that even if it were a fact that the lands of the two estates were mixed up with each other that would be no bar to partition proceedings as the Board had previously held in such cases that partition could proceed under the provisions of sections 112 and 116 of the Act. Bhairab Chandra Ray Chowdhuri and others appellants. (Board's No. 312 A, dated 5th May, 1896.)
9. Joint possession alone is not a sufficient ground for compelling a partition. In order that persons may be coparceners, and so have a right to partition, not only must they be joint in possession, but that joint possession must be founded on the same title. A subordinate tenure-holder therefore has no right of partition as against his superior landlord. *Mukunda Lal Pal Chowdhury vs. Lehuraux*, I. L. R. 20 Calc., 379.
10. The plaintiff was proprietor of an entire estate paying an annual revenue to Government of Rs. 2,444. In 1854 his father gave a *putni* lease of an undivided six annas share of the estate to the defendants' predecessors in title. The plaintiff alleged that the land being held *ijnali*, although he and the defendants collected separately from the tenants their respective shares of the rent, difficulty and inconvenience had arisen in the management of the property, and he therefore sued to have his ten annas share of the land divided by metes and bounds from the six annas share of the *Putnidars*, the land of the entire estate remaining liable as before for the entire amount of the Government revenue payable in respect of it.

Held, by the Full Bench that the plaintiff was entitled to a decree for partition. *Hemadri Nath Khan vs. Ramani Kanta Roy*. I. L. R., 24 Cal., 575.

11. In cases of joint ownership each party has a right to demand and enforce partition. A share-holder of a Putni Talook can claim and enforce a partition of such Putni Talook as against his co-sharers, but such partition would not affect the liabilities of the parties under their contract with the Zemindar. *Shama Sundari Debi vs. Jardine, Skinner & Co.* 12 W. R., 160.
12. The reasons for which one of several joint owners is entitled to a partition of the joint property, apply also to the case of a joint right of performing the worship of an idol. The joint owners of such a right are entitled to perform their worship by turns. *Mitta Kanth Audhicary vs. Nirunjan Audhicary* 22 W. R., 437.
13. A suit will not lie for partition of a portion only of joint family property. *Jogendra Nath Mukerjee vs. Jogobondhu Mukerjee*. I. L. R., 14 Calc., 122.
14. The plaintiffs and the defendants being jointly entitled to and in possession of three Khana Baris in a village and other immovable property, the plaintiff sued for partition of one of the Khana Baris only. *Held* that the suit would not lie. *Haridas Sanyal vs. Pran Nath Sanyal*. I. L. R., 12 Cal., 566.
15. In a suit for partition in respect of a *Mouza* held jointly by two co-sharers in the proportion of 12 annas and 4 annas, it appeared that the plaintiff held a *Mokurari* of a small portion of the share of the 12 annas co-sharer, while the defendant held a *putni* of the entire 4 annas share of the other co-sharer. The Zemindars were not parties to the suit, the object of the plaintiff being to have the small area in which he had a 4 annas share divided as between him and the *putnidar* of the entire 4 annas share.

Held, that (1) a partition of the kind asked for could not legally be made without the Zemindars being made parties to the suit, and (2) that a partition could not be enforced of a part of the estates held by the defendant. *Parbati Charan Deb vs. Ainuddin and others* 9 C. L. R., 170.

16. A suit will not lie in the Civil Court for partition of portion only of a joint estate. *Ramjoy Ghose and another vs. Ram Runjan Chakravorti*, 8 C. L. R., 367.
17. A Court can grant partition of property belonging to a joint Hindu family situated in British India without taking into account other property belonging to family outside British India. *Rámachárya vs. Anantáchárya*. I. L. R. 18 Bom 389.

18. In a partition suit the fact that the plaintiff has not included or has relinquished his share in property liable to division, affords no ground for dismissing the suit where the co-parcener, in whose possession it is, is a party to the suit for it is competent to the Court, in disposing of the case, to make any order in respect of such property that may to it appear right. *Jahardan Vithal vs. Anant Mahadev.* 1. L. R., 7 Bom., 373.

1876, s. 9.
ia (b), (c).]

5. (1) If the interest of any recorded proprietor who is entitled to claim partition is an undivided share in an estate held in common tenancy, he shall be entitled to have assigned to him as his separate estate land of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

(2) If the interest of such recorded proprietor is the proprietary right over specific mouzas or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said mouzas or lands.

(3) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific mouzas or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific mouzas or tracts, of which the assets shall bear the same proportion to the assets of such specific mouzas or tracts as his undivided share in such specific mouzas or tracts bears to the entire mouzas or tracts :

Provided that, if the interest of such recorded proprietor consists of such an undivided share in more than one mouza or tract, he shall not be entitled to have land assigned to him in every such mouza or tract, but the Collector may assign to him as his separate estate land situated in any one or more of the said mouzas or tracts, subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such mouzas or tracts,

(4) If the interest of such recorded proprietor consists partly of land held in severalty, and partly of an undivided share either in the whole estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to his share added to the land held by him in severalty, and the estate thus formed shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors. [New]

(5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding sub-sections, land shall be assigned to him as far as possible in accordance with the principles therein laid down. [1876, s. (d).]

Rulings.

1. In the case of an estate made up of lands or shares in five different mouzahs, application for butwarra having been made by the recorded proprietor of a share in the share of one of the mouzahs, and objection having been taken thereto, it was held by the Board that an interest in one of the five mouzahs, consisting of an undivided share in the mouzah which was held jointly with the proprietors of four other estates, did not come under this clause. As the basis of all partition proceedings is the division of the lands which are borne on the Collector's rent-roll as liable for the payment of one and the same demand of land revenue, it was held that by reason of the existence of such an interest as that above described (*viz.*, in a mouzah held jointly with estates other than the estate under partition) no partition was feasible. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.) The law has now been modified. Vide S. 6. *post*.
2. One of the co-sharers of a joint estate suing conjointly with the others would, under Regulation XIX of 1814, be entitled to a separation of a mouzah from the rest of the Zemindari, and an assessment upon it of a proper proportion of the total Jumma, and having done this he would alone be entitled to have an order for partition of that mouzah as between himself and his co-sharers therein. If the Zemindari which the plaintiff seeks to have divided is so intermixed with the neighbouring Zemindaris that the line of boundary can not be reasonably identified, he can not call upon the Collector to make a new line. But if the Collector has the means of ascertaining where the boundary lies, he is bound to carry out a partition. *Bharat Thakoor vs. Murtaza*, 21 W. R., 225.

6. Whenever any land is held in common between the

[New.]

Separation of land held in common between the proprietors of two or more estates, when the estates are not under partition.

proprietors of two or more estates not being under partition, any one or more of such proprietors may, without applying for partition of their several estates *inter se*, apply for separation of the land held by them in common, and for the allotment of the proper shares of such land to each of their separate estates, the land-revenue of those estates remaining unaltered; and such application shall be dealt with as far as may be in accordance with the provisions of this Act.

NOTE.—This is a very salutary measure. Previous to this Act if certain lands were held in common by the proprietors of certain estates, the proprietors could not apply for separation of the lands held in common and assignment of their proper share to each of the above estates, unless the proprietors applied for partition of their several estates held *inter se*. By the present section that obstacle has been altogether removed. The proprietors can now have separation of land held in common between two or more estates, although they are not under partition. The only restriction that has been imposed is that land-revenue of those estates will remain unaltered.

[1876, s. 12.
modified.]

7. (1) Where the lands of an estate have been

Partition of lands under Act where a partition has been made by private arrangement.

divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate lands to be held in severalty as representing his interest in the estate, no partition of the estate shall be made under this Act except—

(a) on the joint application of all the proprietors,
or

(b) in pursuance of a decree or order of a Civil Court.

(2) No objection to the partition of an estate under this Act on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under section 29 declaring the estate to be under partition.

RIGHT TO CLAIM PARTITION.

NOTE 1.—This Section reproduces Section 12 of the Estates Partition Act, 1876, with two amendments, namely, (1) a provision that the Section will only apply where the private arrangement has been formally made and agreed to by all the proprietors, and (2) a clause declaring that no objection to the partition of an estate on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under Section 29 of the Act declaring the estate to be under partition.

NOTE 2.—In sub-section (1) the word “formally” is put in to show that the arrangement must be a thorough, *bonafide*, private arrangement though not necessarily to be registered or put into writing. (Vide Supplement to the Calcutta Gazette, dated 20th October, 1897, p. 4024). See also the recent decision in the case of Gyannessa vs Mobarakanessa reported in I. L. R., 25 Calc., 210, where the Judges of the Hon'ble High Court have held that “Partition is not required by law to be effected by an instrument in writing”.

NOTE 3.—The word “proprietors” used in sub-Section (1) means proprietors existing at the time the arrangement was made. It does not matter if the present proprietor be not the proprietor existing at the time the arrangement was made and be the representative of such proprietor. (Vide Supplement to the Calcutta Gazette, dated 20th October 1897, p. 4025).

Rulings.

1. An estate was brought under partition by an application of some of its proprietors. The proprietors of another share objected that, there having been a previous private partition, the butwaras in progress was inadmissible under Section 12. The Deputy Collector who held a local enquiry found that the proprietors were in separate possession of specific lands, and that the partition could not proceed. This view was upheld by the Collector, but the decision was reversed by the Commissioner in appeal. On the hearing of the appeal before the Board, it was urged that separate possession was alone sufficient to prove the existence of a private arrangement. But the Board could not accept this view. They observed that what the law contemplated was a formal arrangement, agreed to by all the parties concerned and followed by separate possession in accordance with the arrangement, and that the law very justly declared that when such an arrangement had been made the parties should not be permitted to resile from it. They further observed that it would be unjust that a proprietor, who had received specific lands under such an arrangement, and had allowed such lands to fall out of cultivation or otherwise to deteriorate, should be permitted to claim an interest in lands which had been improved by the good husbandry of his fellow-proprietors. The Board held

that in such a case the first step would be to establish the existence of an agreement, and that although some of the proprietors might have entered into an informal understanding among themselves to occupy certain lands and not occupy others, yet when the owners of other shares were not parties to the arrangement, and had not in any way recognized it, the partition was not barred by such an arrangement. (Board's Proceedings of 8th July 1882, No. 86, Collection 7, File 2123).

2. A partition can only be demanded, as of right, when each of the separate shares is made liable for an amount of Government revenue in proportion to its assets as compared with those of the undivided estate. When a private arrangement has been made among the proprietors, by which certain lands have been made liable for an amount of Government revenue not bearing the same proportion to the assets of such lands as the Government revenue of the entire estate bears to the assets of the whole estate, a partition may still be made if all the proprietors agree to it, and if the Collector is satisfied that the Government revenue is sufficiently secured. But no such partition can be made except on the joint application of all the recorded proprietors, and unless the Collector is fully satisfied that the interests of Government will not be endangered. (Board's Proceedings of 30th September 1882, No. 334. Collection 7, File 20.)
3. Certain proprietors representing altogether a nine-annas share in an estate applied for a partition of their shares. Subsequently, the owners of a two-annnas share also applied to have their share separately assessed and demarcated. Their applications were opposed on the ground that a private partition of the estate having been previously made in the year 1226 Fusli, the present partition could not be made with reference to the provision of the present butwarra law. The Deputy collector in immediate charge of butwarra proceedings considered that the division of 1226 was a bar to further proceedings. The collector took the opposite view. The Commissioner on appeal held that a private butwarra had undoubtedly taken place, but he admitted the force of the technical objections raised on behalf of the respondents that, as a portion of the lands *viz.*, some 17 bighas were held *ijmali*, and as the several shareholders under the private partition were not in separate possession of the entire lands representing their interests, the private partition was, with reference to the terms of section 12 no bar to the proceedings, and he in consequence confirmed the Collector's order allowing the butwarra to proceed. On appeal the Board upheld the Commissioner's order. They held that, though the butwarra of sixty years before into two 8 annas shares had taken place, it had clearly been superseded by some subsequent arrangement under which the proprietors were in possession, and admittedly holding shares representing 9, 2,

5 annas. Under these circumstances, it could not be said in the terms of this section that the private arrangement of 1226 Fusli was in force. They however did not attach much weight to the objections raised regarding the 17 bighas of land which were admittedly always held ijmalī, as, for special reasons, tanks and other special plots of land are frequently retained ijmalī. (Board's proceedings of 30th December 1882, No. 140, Collection 1. File. 1996).

4. If a tank is held ijmalī and other lands are divided by private partition, the partition cannot proceed. (Board's No. 213 A, dated 12th April 1892.)
5. The private partition of an estate, such as that contemplated by this section, having taken place, it was held to be binding on the purchaser of a portion of one of such separated estates, as he must have been well aware at the time of his purchase of the existence of a private partition between his vendor and other co-proprietors. He could not therefore claim a partition under this Act. (Board's proceedings of 30th January 1886, No. 58, collection 1. File 67.)
6. A private butwarra, though not binding against the Government or against a purchaser at a sale for arrears of Government revenue, who derives his title directly from Government is binding as between the parties to the Butwarra and persons claiming title under them. Tripoora Sundari Chowdhurani vs. Kali Chandra Ray Chowdhury. 18 W. R., 327.
7. The private partition contemplated in this section is one of the entire estate and not merely of one village out of several. A division of only one village out of several, however complete the arrangement, would in no way operate as a bar to partition. (Board's proceedings of 13th March, 1886 No. 98, Collection 7, File 91).
8. The Board have on more than one occasion held that the partition referred to in this section as sufficient to bar proceedings for a butwarra under this Act, must be of most complete and formal description, that there must be a distinct demarcation of the lands of each recorded proprietor, and that, as required by the section itself clear evidence must be forthcoming to show that each proprietor of the estate is in possession of lands severally representing his interest in the estate. (Board's proceedings of 13th March, 1886, No. 205, collection 7 File 35.)
9. Where an application for partition is opposed on the ground of an alleged previous private partition, it is incumbent on the objectors not only to establish by satisfactory evidence the fact of such partition having taken place but also that in accordance with such arrangement each party is in possession of separate

lands held in severalty as representing his interest in the estate. (Board's No. 437 A, dated 12th June, 1885.)

10. An estate A consisted of two entire villages and a half share of another village B, the other half belonging to two other estates, C and D. The lands of the half share of B in estate A were demarcated by the survey from the half share of B belonging to the two other estates C and D. The proprietor of a seven-annas share in the half of the village B only of the estate applied for the partition of his share. The proprietor of the remaining one-anna objected that the partition could not proceed, in as much as by a private arrangement he was in separate possession of certain specific lands, and in as much as the jungle lands were held in common between the three estates. In appeal the Board observed that although it might be shown that the objector held a defined area of some 200 bighas, and there might be complete evidence of separate holding of this portion of the estate, yet this did not bring the case within section 12 :—"The separate possession in severalty of one proprietor will not suffice : it is necessary that each proprietor should hold his lands in this manner, and moreover it has been more than once ruled by the Board that separate possession must be one by metes and bounds, each proprietor's share being clearly and fully defined. The case would seem to be one in which the terms of section 106 would apply." Thus they held that the private arrangement in this case was not such as was contemplated in this section, and that this section was no bar to the partition proceedings. (Board's Proceedings of 1st May 1886, No. 160, Collection 7, File 262).
11. An estate was at first privately divided in two equal shares. After some years it was privately divided into six equal shares. After several years it was held by no less than 28 recorded proprietors. One of them having a one-anna interest applied for partition, and an objection was preferred that there had been a private partition which under this Section would be a bar to a partition under this Act. The Board held that the circumstances having changed from the time of the original private partition and even from the second, when there were six equal shares, the partition could proceed. It was clear, the Board held, that the division into six *puttees* did not represent the existing state of things on the property, and that it could not be said that in accordance with this division, each of the present proprietors was in possession of separate lands representing his interest in the Estate. (Board's Proceedings of 29th May 1886, No. 276, collection, 7, File 472).
12. Parties holding separate portions of an estate according to a private arrangement previously made, are not in a condition to apply to the Collector for a butwarra when unable afterwards

to agree among themselves. *Aj'dhya Persad vs. Kristo Dyal*.
15 W. R., 165.

13. Lands held in joint possession, each proprietor receiving his proportion of the rent according to his interest in the land, cannot be divided under the Butwarra laws. *Doorga Kanta Lahoori vs. Radha Mohan Gukro Neogy*. 7 W. R. 51.
14. In an estate a partition of which was applied for under this Act, there had been a private partition of the lands, leaving 68 bighas held in *ijmali* tenure. The case having come up to the Board in appeal, they observed that "as the Commissioner has rightly remarked, section 12 contemplates the divisions of all the lands of an estate, and separate possession of each proprietor or set of proprietors of lands representing their full interest in the estate. The exclusion of the 68 bighas is therefore fatal to the claim of a private partition having been effected" (Board's Proceedings of 4th September 1886, No. 146, Collection 7, File 197.)
15. Application having been made by some co-sharers for partition of Estate No. 2214, Taluq Jaynarayan Das, in Tuppeh Hazradi, the estate has been declared by the Collector to be under partition under s. 31 of the old Act. An objection was raised at this stage by another co-sharer that before the Permanent settlement of the *mehal* there were six separate *shikmi* Taluqs, granted by the Zemindar of Tuppeh Hazradi, and that these six Taluqs were treated as one when the settlement was made with Jaynarayan Das in 1193 B.S. ; that there were six sets of proprietors and that though some of them had interests in more than one of the six Taluqs yet none had interests in all of them ; that the lands have all along been separately possessed and the Government revenue was being paid separately. The Deputy Collector, on enquiry, found that the six Taluqs, with different revenue, were treated as one in the Dole of 1197 B.S. and that though the proprietors were recorded as sharers of the entire estate their shares did not extend over the whole *mehal*, as those shares were calculated, for the purpose of convenience, in proportion to the revenue each was paying at the time and that they and their successors had been in possession of the lands separately. The Deputy Collector, therefore relying upon the decision of the Board in the partition of *mehal* Sohoa (vide Board's No. 177A, dated 10th February, 1891) which followed the decision of the Board in the partition of Estate Panchitura (decided in 1878) reported to the Collector for striking off the case under section 14 of the Act. The Collector held, that the proprietors having been in possession of the lands by private arrangement Section 14 did not apply in the case, as there was no question of alienation. He was of opinion that the case fell within the purview of s. 12 of the Act, and partition could not proceed except on a joint petition presented under.

sections 101 and 105 of the Act. On appeal to the Commissioner, an objection was raised whether a Collector could entertain an objection under section 12 of the Act after the estate had been declared to be under partition under s. 31. The Commissioner held, that though a collector could not entertain an objection at this stage, a Commissioner could do so. The Commissioner therefore upheld the orders of the Collector. On appeal being preferred to the Board, the Board agreeing with the Commissioner dismissed the appeal. *Durga Kanta Das vs. Gagan Chandra Das.* (Board's Appeal No. 93 of 1893 dated 4th May, 1893.)

16. A private partition of a joint estate is not inconsistent with subsequent survey proceedings and does not take away their legal effect. *Hunooman Chowbay vs. Bindoo Toraba.* 10 W. R., 336.
17. Where an estate was divided by private arrangement more than fifty years ago, and the division was subsequently maintained in a judicial decision, since which the co-sharers had for many years exercised rights of ownership independently of each other a butwarra of the whole estate cannot afterwards be demanded even though a regular separation of one share has been immediately obtained by a suit in a Civil Court. *Permessur Dutt Sahee vs. Audh Shahajee.* 5 W. R., 40.

8. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be entitled to claim partition under this Act.

Tenants for life not entitled to claim partition.

[1876, s. 10]

S. 8. NOTE.—In connection with this section the Hon'ble Babu Surendra Nath Bannerjee moved that the following proviso be added to section 8 namely :—

“ Provided that the interest of a Hindu widow in the estate of her deceased husband shall not be deemed to be a life interest under the terms of this section.”

He said.—“My amendment seeks to give effect to what is the Case-Law on the subject. It has been more than once held that the interest which a Hindu widow possesses in the estate of her deceased husband is something more than a life interest, and that she is fully entitled to partition. Therefore instead of allowing the right to rest on the decision of the Courts, I propose to embody it as a part of the substantive law. I know that that is the view of the High Court, and I have before me rulings of the High Court on the point. But I venture to suggest that having regard to the fact that we are

Rulings.

A Hindu widow who has succeeded to a share in a revenue-paying estate as heir to her deceased husband is not a person having a proprietary interest in an estate for the term of her life only, within the meaning of S. 10, Beng. Act VIII of 1876. Even if she were, a Civil Court would not be debarred from decreeing partition of a revenue-paying estate at her instance if a proper case for the passing of such a decree be made out by her.

Jadomoney Dabee v. Saroda prassonna Mookerjee (1 Boulnois, 120.); *Phool Chand Lall v. Rughoobun Sahoy* (9 W. R., 108.); *Katama Natchiar vs. The Rajah of Shivagunga* (9 Moore's J. A., 539.); and *Bhugabutti Dabee v. Chowdhry Bhola Nath Thakoor* (L. R. 2 I. A., 256.) referred to.

Principles on which Courts should order partition at the instance of a Hindu widow stated. *Mahadeay Kooer vs. Haruk Narain*, I. L. R. 9 Cal., 244.

now legislating on the subject, it is desirable that we should embody the rulings of the Court in the law of the land. I believe the principle is conceded, and there is no difference of opinion between the Hon'ble Member in charge of the Bill and myself. It is only a question as to how we should proceed. If, however, the council is of opinion that it is not expedient to introduce the amendment, I have no serious objections to offer."

The Hon'ble Mr. Finucane said—The High Court decided in the case of *Mohadeay Kooer vs. Haruk Narain* and others that the interest of a Hindu widow succeeding as heir to her husband's estate is more than a life-interest. *Therefore she would not be debarred, as the section stands, from claiming partition.* But the amendment of the Hon'ble Mover might possibly frustrate his object for he says that for purposes of this section the interest of a Hindu widow is not a life-interest, which might be taken to mean that it is less than a life-interest. However that may be, I oppose the amendment on the ground that it is superfluous."

The Hon'ble Babu Surendra Nath Bannerjee said:—"I don't accept the view put forward by Hon'ble Member in charge of the Bill. I don't accept the interpretation which he has put upon my amendment. Section 8 creates a disability. I want to remove this disability, from the status of a Hindu widow, therefore instead of lowering her condition, I think my amendment will improve it. *At the same time having heard what has fallen from the Hon'ble Member, I desire to withdraw this amendment.*"

The motion was, by leave, withdrawn.

2. A Hindu widow and a recorded share-holder of an estate having an adopted son applied to have her share of the estate partitioned off. The application to the Collector was opposed by one of the co-proprietors of the estate on the ground that her interest in the estate was one for life only, and that therefore under section 10 of the Act she was not entitled to claim a partition. The Collector held that with reference to the opinion expressed by the High Court in the case of Mahadeo *versus* Huruck Narain (I. L. R., 9 Cal., 244), the widow was bound to establish in a Civil Court exceptional circumstances justifying her application for partition. The Commissioner on appeal remanded the case with instructions that the partition should be allowed to proceed if the adopted son of the widow was of age and of sound mind, and there was no reasonable objection on his part. The commissioner subsequently stopped the partition proceedings. The adopted son having given his consent, it was eventually held by the Board on appeal that as the name of the applicant was recorded in the Collector's register in respect of her share for the partition of which she claimed, and as her possession was not disputed and the interests of the heir presumptive were according to the terms of the decision of the High Court not injuriously affected by an order for partition, the appellant Hindu widow was entitled to the partition she claimed. (Board's Proceedings of 19th March 1886, No. 112 Collection 9, File 132).
3. In a case the Collector rejected the application of a Hindu widow for the partition of her share in a joint undivided estate on the ground, among others, that as she held a proprietary interest in the estate for the term of her life only, she was debarred under the provisions of section 10 of the Act from claiming a partition of her share.

On the widow's appeal against the Collector's orders the Commissioner held that the proper course to pursue in the case was to give the reversionary heirs permission to join with the widow in the petition for partition. He then went on to discuss the question who were the reversionary heirs, and having decided that they were the daughters and daughter's children of the widow, and not the brother's and nephews of her deceased husband, he returned the case to the Collector with directions to proceed with the partition if the reversionary heirs joined in the application. The Board were of opinion that the orders issued by the Commissioner were erroneous and must be set aside. They observed:—"The terms of section 10 of the Act which disqualify any person having a proprietary interest in an estate for the term of his life only, from claiming a partition are absolute. Apart also from the fact that the Revenue Courts

have no jurisdiction to enquire into or determine questions of right or inheritance, it is to be observed that the only persons who can claim a partition, or who can be recognized by the revenue Courts, are registered proprietors who are in actual possession."

The appeal was accordingly decreed, and the orders originally passed by the Collector rejecting the application for partition were confirmed. (*Board's Proceedings of 30th July 1881, No. 201; Collection 1576, File 1.*)

- 4.—One Dr. George Manook applied for partition of his recorded share in estate No. 162 at Dacca, but his application was opposed by some of his co-sharers on the ground that he was debarred, under section 10, Act VIII of 1876, from claiming a partition of his interest in the estate, his being a life-interest only. The Deputy Collector, on enquiry, found that after the death of the applicant's mother the property would go into the hands of the reversioners of which Dr. Manook was one. The Deputy Collector was, therefore, of opinion that unless the other children of Mr. and Mrs. Manook gave their consent to the *Butwarrah*, the applicant had no right to claim a partition. On this Mr. Manook and his children, by a petition, gave their consent and stated that they had no objection to partition being proceeded with. But the Deputy Collector doubting the validity of their consent, reported to the Collector that the case was barred under section 10 (Act VIII of 1876). The Collector agreeing with him rejected the application for partition. The Commissioner, on appeal, held that had all the reversioners joined with the applicant in the petition for partition the *butwarrah* might proceed. On appeal to the Board they observed:—"What the Revenue Courts have to do is to see whether Dr. Manook has legal possession of the share claimed and that his right is not his own life-interest. He is, the Board takes it, in exactly the same position as Mr. Wise and Mr. David *i. e.*, he is in actual possession of the share as proprietor at this moment. It may hereafter be a question whether he will continue to be so after his mother's death but that does not affect the case as now before the Board and he appears to be fully entitled to partition and to have been rightly registered as in full possession." The Board seeing no possible harm, either to his brothers and sisters should they hereafter be found to own shares, or any danger to the Government revenue, directed the partition to proceed. (*Board's No. 18A, dated 12th January, 1894.*)

CHAPTER III.

SECURITY OF THE LAND-REVENUE.

[1876, s. 5,
modified.]

9. No partition of an estate made after the commencement of this Act shall relieve any land from liability to the Government for the total demand of land-revenue assessed upon the estate of which the land forms part, unless the partition is made as herein provided.

[1876, s. 6,
modified.]

10. Except as otherwise provided in this Act, the amount of land-revenue to be assessed on each separate estate shall bear the same proportion to the whole amount of land-revenue for which the parent estate was liable as the assets of such separate estate bear to the whole assets of the parent estate.

[1876, s. 11,
modified.]

11. Subject to clauses (b) and (c) of section 2 of this Act, no partition of an estate shall be made, and no application for the partition of an estate shall be admitted,—

- (a) If the annual amount of land-revenue for which the separate estate of the applicant would, after partition, be liable would not exceed ten rupees ; or
- (b) if, after separation of the applicant's interest, the annual amount of land-revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five Rupees ; or
- (c) if the Collector considers that for any reason any of the separate estates would be likely to prove an insufficient security for the payment of the land-revenue which would be separately charged upon it.

NOTE.—This is the most important section in the whole Act. It has created a sort of revolution in the laws regarding the partition of Estates. The framing of this section evoked much discussion in and outside the Council. The Bill as introduced provided that partition should not be allowed if the separate estate of any of the proprietors would be liable for an annual amount of land-revenue not exceeding Rs. 100. Vehement oppositions being made against the said exorbitant limits, the Select Committee at first reduced the limits to Rs. 20, and objections still subsisting in their final Report, the Select Committee came down to the present limits. The limit has thus been raised from one Rupee of the previous Act to upwards of ten Rupees for the applicant's separate estate and of Rupees 5 for the residuary share. In the previous Act there was a provision for the proprietors redeeming the amount of revenue in case it did not exceed one Rupee, but this Act has done away with that advantage. (*Vide Introduction.*)

Under the previous Act the restriction as to the limits of Sudder Jumma was imposed regarding the permanently settled estates only but this section has been made applicable to all estates, whether permanently settled or not.

In this section has been inserted for greater clearness a formal saving of the clauses of section 2 of the Act which admit of partitions pending under the Act of 1876 being carried on under that Act.

12. (1) Any Civil Court which has made a decree [New]
 Execution of decree for partition, for the partition or for the separate possession of a share of an undivided estate paying land-revenue to the Government may, notwithstanding anything in section 265 of the Code [XIV of 1882]
 of Civil Procedure, cause the decree to be executed in the manner prescribed in section 396 of that Code; and, if it does so the joint and several liability of the entire estate for the whole of the land-revenue chargeable upon it shall not be prejudiced or affected.

(2) If any decree is sent to the Collector for execution under section 265 of the said Code, the execution thereof shall be subject to the restrictions imposed by section 11 of this Act.

NOTES.—This section is new. The Civil Court has been empowered by this section to execute its decree under section 396 of the

Civil Procedure Code, notwithstanding the contrary provisions contained in section 265 of the said Code. This section seems to be superfluous, having regard to the recent Full Bench case of *Jagadish Chandra Datta v. Railash Chandra Lahiri* reported in I. L. R. 24 Cal., 723. However, in order to avert all difficulties as to the rights of the Local Councils to make laws contrary to those of the supreme Legislative Council the special sanction of the Governor-General of India has been obtained to the provisions contained in this section (*vide Preamble*.)

Rulings.

1. Where a decree for partition of an estate has been transmitted by the District Court to the Collector for execution under section 265, Civil Procedure Code, the Court that made the decree is not deprived of its judicial power to hear and decide objections to the division of the estate made by the Collector. *Chinna Sectayya vs. Krishna Vanamm*. I. L. R. 19 Mad. 435.
2. Where the Collector makes a partition under S. 265 of the Code of Civil Procedure, the Civil Court has no power to examine his work or to direct him to make a fresh partition. *Shrinivas Hanmant vs. Gurunath Shrinivas*, I. L. R., 15 Bom., 527.
3. The Deputy Collector to whom a decree has been referred under S. 265 of the Civil Procedure Code (Act XIV of 1882) for partition, is not confined to mere division of lands decreed to be divided, but includes the delivery of the shares to their respective allottees. *Probhudus Lakhmidas vs. Shankar Bhai*. I. L. R. 11 Bom. 662.
4. A Court has no power under section 396, of the Code of Civil Procedure to order its Amin to cause a wall to be built separating portions of property of which partition has been decreed. *Sohan Lall vs. Haradeo Sahai*. I. L. R. 19, All., 194.

Sections 265 and 396 of the Civil Procedure Code run thus :—

"265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force, for the partition or the separate possession of shares, of such estates."

"396. In any suit in which the partition of immoveable property, not paying revenue to Government appears to the Court to be necessary, the court, after ascertaining the several parties interested in such property and their several rights therein may issue a commission to such persons as it thinks fit to make a partition according to such rights.

Partition of Estate or separation of share.

Commission to make partition of non-revenue-paying immoveable property.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report shall be annexed to the commission and transmitted to the court; and the court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new Commission, or (where the commissioners agree in their report) pass a decree in accordance therewith."

13. The Collector may refuse to admit an application

Power to refuse partition which would result in formation of estate scattered so as to endanger the safety of the land-revenue.

for the formation of land held in severalty into a separate estate, or to proceed with a partition undertaken on such an application, or to admit or proceed with any other application

[1876, s. 13 modified]

for partition, if, in consequence of the land being intermingled with that held by other proprietors, the result of the partition would be to form out of a compact estate one or more estates consisting of scattered parcels of land in such a way as, in the opinion of the Collector, to endanger the safety of the land-revenue : Provided as follows:—

- (a) a partition may be allowed in any such case if the recorded proprietors agree to such a distribution of land as would make the estates formed by the partition reasonably compact ;
- (b) Nothing in this section shall be deemed to prohibit the partition into separate estates of any parent estate which before such partition is not compact and consists only of scattered parcels of land.

14. No proprietor who has alienated any portion

Interest alienated with special condition as to liability for land-revenue.

of his interest in an estate, or in any specific land of an estate, by private contract, with the condition that the transferee shall be liable in respect of the interest

[1876, s. 4.]

acquired by him to pay a specified amount or a specified share of the land-revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under section 10),

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate ;

and no such transferee as aforesaid, and no person deriving his title from such transferee, shall be entitled to claim separation of the interest which has been so acquired :

Provided that a separation of such interests may be made if the parties concerned agree—

- (a) to waive the conditions of the contract as regards the proportion of land-revenue for which the transferor and transferee or their representatives respectively are liable, and
- (b) to hold the estates which may be allotted to them respectively by the partition subject to the payment of such amount of land-revenue as may be assessed upon them respectively under this Act.

Rulings.

1. A certain share in an estate was sold reserving certain rent-free and homestead lands. The purchaser, however, was made liable by the deed of sale for the revenue of the purchased share : by this was meant, not the revenue proportionate to the amount of land actually sold, but the revenue proportionate to the share in the estate that was sold. The Board, agreeing with the Commissioner, held that under this section the partition could not proceed. (*Board's Proceedings of 20th February 1886, No. 61, Collection 5, File 293.*)
2. An application for partition was objected to on the ground of previous private partition and under section 14 of the Act. The Deputy Collector held that the estate in question was

at first divided into three equal shares, and then into two and then held by four recorded proprietors; that as the state of things had altered from what it was at the time of the original partition the Deputy Collector was of opinion that partition could proceed as it could not be said that in accordance with the previous partition each of the present proprietor was in possession of separate lands representing his interest in the estate. Moreover, as it was admitted that the tank and some lands were held ijmalī the Deputy Collector found that sec. 12 was no bar to the partition.

As to objection under Section 14 the Deputy Collector was of opinion that as 5 bighas of land given by the applicant's predecessor to the objector's predecessor in estate No. 3555 was comparatively small in comparison with 34 bighas of the entire estate there could be no danger to the Government revenue and therefore section 14 need not be a bar to partition. The Collector agreeing with the Deputy Collector rejected the objection: on appeal to the Commissioner he reversed the Lower Court's order and directed to strike off the partition. On appeal, the Board confirmed the commissioner's order with the remark that "the present division was so far from being inconsistent with the first one that it had arisen directly from it and was based on it. The fact of the tank and other indivisible property having been left ijmalī did not interfere with completeness of the division, since after a regular butwarra had been made this property would probably and certainly might have been left in common." (*Boards No. 213 A, dated 12th April, 1892.*)

- 3--Kumar (now Rajah) Rajendra Narain Roy having applied for partition of his recorded share in estate No. 10 Purgunnah Bhawal his application was opposed by Mohin Chandra Roy on the ground that the applicant was not in possession of the share for the separation of which he had applied and that his application was barred under Section 14, owing to the reservation of certain lands out of the shares sold by the objector's father to the applicant's predecessor in title without any corresponding deduction having been made in the proportionate share of the Government revenue to be paid on the fractional shares so sold. The Collector found that Rajendra Narain Roy was in possession of the interest the separation of which he had applied for and that the objector had failed to establish his possession of the reserved lands. He therefore postponed the partition proceedings for 4 months to enable the objector to establish his right to the reserved lands in the Civil Court under Section 24 of the repealed Act. No steps having been taken by the objector within the time allowed, the estate was brought under partition under Section 31 of the Act of 1876. On appeal by the objector, the Commissioner confirmed the order of the collector. On appeal to the Board they held that it would be absurd to suppose that any such petty reservations as

made in this case could be held to debar the recorded proprietor of 3rd of the entire estate from being considered within the meaning of the law as in actual possession of his recorded share; That section 14 of the Act (for the reasons stated in the judgment) did not apply to this case, as the Government revenue was in no way endangered. (Board's No 270 A, dated 21st May, 1886.)

- 4—In an enquiry under this Section it would not be necessary for a Collector to require strict proof of a contract before refusing to make a Butwarra. If on application being made the Collector should find that as a fact an arrangement was in existence and was recognized by the co-proprietors under which some of them held their shares on payment of a certain specific amount of the joint Sudder Jumma not being in proportion to the actual produce of such shares, and without reference to such proportion, he would properly refuse to make a Butwarra which should destroy the actual status as he finds it to exist in this respect by separating off estates each liable for a proportionate share of the joint Sudder Jumma. (Board's No 177 A, dated 10th February, 1891.)

- [1876, s. 15.] **15.** If any estate has been declared to be under partition as provided in Section 29, any arrears of land-revenue accruing due thereon before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and, if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.

NOTE.—The last portion of this Section is new. It is provided that if a sale for arrears of revenue is set aside the partition proceedings, shall be revived.

- [1876, s. 16.] **16.** Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13 or section 14 of Act XI of 1859 (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*), or any similar law for the time being in force, in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby:

Sale for arrears of land-revenue, of an estate which is under partition.

Sale for arrears of land-revenue, of share in an estate which is under partition.

Provided that, if any share in any estate is sold for its own arrears of land-revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

Ruling.

The Purchaser of a specific portion of the land of an estate separately registered with a separate jumma under S. 11, Act XI of 1859 is not entitled to claim a butwarra of the whole estate, and to obtain a share of the whole land proportioned to the amount of the Sudder Jumma paid by him. Fukeer Chunder Saha vs. Nobodeep Chunder Shaha. W. R., 1864, 59.

Note.—The sections of the Act XI of 1859 mentioned above are inserted at length for facility of reference.—

10. "When a recorded sharer of a joint estate, held in common tenancy, desires to pay his share of the Government Revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the share held in the estate by applicant. The Collector shall then cause to be published in his own Office, in the Court of the Judge, Magistrate (or Joint Magistrate, as the case may be), and Moonsiffs and in the police Thannahs in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him. If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

11. When a recorded share of a joint estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of Sudder Jamma heretofore paid on account of it. On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding Section. In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account, shall be held to be that from which the separate liabilities of the share of the applicant commence.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate that the amount of Sudder Jamma stated by the applicant to have been heretofore paid on account of such portion of land, is not the amount which has been recognized by the other sharers as the Jamma thereof, the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other Officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due. In all such cases notice of the intention of excluding the share or shares from which no arrear is due, shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion or the aggregate of the several separate portions of Jamma assigned thereto.

14. If in any case of a sale held according to the provisions of the last preceding Section, the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other Officer as aforesaid

Separation of shares consisting of specific portions of land, by the opening of a separate account.

If objection be made, parties to be referred to the Civil Court.

Sale of separate shares.

Entire estate may be sold under certain conditions.

shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to Government the whole arrear due from such share. If such purchase be completed, the Collector or other Officer as aforesaid shall give such certificate and delivery of possession as are provided for in Sections 28 and 29 of this Act, to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale. If no such purchase be made within ten days as aforesaid, the entire estate shall be sold after notification for such period and publication in such manner as is prescribed in Section 6 of this Act."

CHAPTER IV.

INITIATION AND DISCONTINUANCE OF PARTITION PROCEEDINGS.

17. Every application for partition shall be made in writing to the Collector of the district on the revenue-roll of which the estate is borne, and shall be presented by the applicant or by his duly authorized agent.

[1876, s. 17
and s. 52,
para 1.]

Rulings.

1. Section 265 of the Code of Civil Procedure does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for. A Civil Court therefore has jurisdiction to decree partition in such a case; and a suit for possession, after partition, of a share in part of an undivided estate, in which part alone the plaintiff has a share, is maintainable in a Civil Court if no division of revenue is sought. *Debi Singh vs. Sheo Lall Singh, I. L. R., 16 Cal., 203, approved and followed; Metherban Rawoot vs. Behari Lall Barik, I. L. R., 23 Cal., 679, overruled. Jogodishury Debia vs. Kailash Chundra Lahiri, Full Bench I. L. R., 24 Cal., 725.*

2. The meaning of S. 265 of the code of Civil Procedure is that where a revenue-paying estate has to be partitioned into several revenue-paying estates, such partition must be carried out by the Collector. *Zaharun vs. Gowri Sunker, I. L. R. 15 Cal., 198 approved. Debi Singh vs. Sheo Lall Singh, I. L. R., 16 Cal. 203.*

3. If a case is once struck off, a fresh application under section 17, specifying all the co-sharers and fulfilling the requirements of sections 18 and 19, is necessary. (Board's appeal No 180 of 1894, decided on 27th June 1895).

[1876, s. 18,
modified.]

18. Every such application shall be signed by the applicant, or by his duly authorised agent, and shall contain the following particulars, so far as they are known to or can be ascertained by him, namely:—

- (a) The name of the parent estate ;
- (b) The number under which such estate is borne on the revenue-roll, and the land-revenue demand for which it is liable ;
- (c) The number under which such estate is borne on the Collector's General Register of revenue-paying lands ;
- (d) The name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post office of the area within which each of the said proprietors resides ;
- (e) The character and extent of the interest of which each proprietor of the parent estate is in possession ;
- (f) A specification of any land held by proprietors of the parent estate in common with proprietors of other estates; and of the rights of such proprietors respectively in such land, and
- (g) Such further particulars, if any, as may be prescribed by rules made by the Board.

NOTE.—In clause (d) a statement is required of (1) the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and (2) the name of the Post Office of the area within which each of such other proprietors resides. [*this is new.*]

19. (1) Every such application shall, subject to the provisions of sub-Section (4) of this section, be accompanied by a copy of the rent-roll of the estate, and by a specification referring to the papers of every measurement and record-of-rights which has respectively been made of and prepared for the estate by any officer appointed in that behalf by the Government or other competent authority and of which the person verifying the application under sub-section (2) has knowledge. [1876, ss. 19, 52, modified.]

(2) The said application, rent-roll and specification shall be verified at the foot of the application, by the applicant, or by his duly authorised agent having personal knowledge of the facts stated therein, in the manner following, or to the like effect :—

“I, A. B., declare that the particulars contained in this application and in the rent-roll and specification accompanying it are correct to the best of my knowledge and belief.”

(3) If the said application, rent-roll or specification contains any entry which the person making the verification knows or believes to be or does not believe to be true, such person shall be liable to be punished in the same manner as if he gave false evidence.

(4) If the person presenting the application is unable to produce a rent-roll as required by sub-section (1) of this section, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll ; and the Collector may, if he thinks fit, require such person to produce such rent-roll.

20. If any such application does not in the opinion of the collector fulfil the requirements of the foregoing sections of the chapter he may either reject it or return it for amendment. [1876, s. 20.]

Procedure if application is not in order.

21. If in the opinion of the collector the application fulfils the said requirements, and if there appears to him to be no objection to making the partition he shall—

[1876, s. 21.]

Notification and notice of application.

(a) publish a notification of the application in the manner prescribed by section 104, and also by causing copies to be posted up at the court of the Judge of the district and at the Court of every Munsiff and Sub-divisional officer within whose jurisdiction, and at every police station within the jurisdiction of which, any land appertaining to the estate is known to be situated ;

(b) by such notification invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection, either in person or by duly authorized agent, on or before a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate ; and

[1876, s. 22.]

(c) serve a notice of the application on such of the recorded proprietors of the estate as have not joined in the application, on any unrecorded proprietor who has been named in the application, and on every proprietor of any other estate who holds land in common with the proprietors of the estate to which the application relates.

NOTE to clause (b) :—It has been provided in this clause that the notification of an application shall invite objectors to state their objections on *or before* the date specified in the notification. The words “or before” being new.

[1876, s. 23.]

22. If any person claiming a proprietary right as aforesaid states an objection to the partition on or before the day specified in the notification published

Power to reject application on receipt of objection.

under section 21, or at any subsequent time if it shall then seem fit to the Collector to admit such objection, and the Collector, on consideration of the objection, is of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and if he does so shall record the grounds of such rejection.

Ruling.

1. Putnidars cannot be considered as persons claiming a proprietary right who are entitled to object under this section, but a recorded part-proprietor of a mouzah, a portion of which mouzah also formed a part of the estate under butwarra, so that the name of such proprietor would be entered in the application under section 18 (f), was held to be entitled to object. (Board's Proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

23. If any such objection raises any question of right or title or of extent of interest as [876, s.]

Procedure when objection raises any question of right or title or of extent of interest.

between any applicant and any other person claiming to be a proprietor of the parent estate, and if it appears to the Collector that such question has not been already determined by a Court of competent jurisdiction, the Collector may hold such inquiry into the objection as he may deem necessary, and, if he be satisfied that the applicant is in possession of the extent of the interest for the separation of which he has applied, may, instead of rejecting the application as provided in section 22,

- (a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate; or
- (b) direct that such proceedings be postponed for four months.

24. At the expiration of the said four months the Collector shall resume the proceedings, unless the person who has made the objection, or some other person,— [1 6, s. 25]

Resumption of proceedings after postponement.

- (a) has obtained an order from a Civil Court directing that such proceedings be stayed, or
- (b) shows that a suit has been instituted before a Civil Court to try some question of such a nature as to lead the Collector to think the proceedings ought to be stayed until the question has been finally decided or until the proceedings in such Court in respect thereof shall have terminated.

Ruling.

1. The injunctions of a Civil Court must be complied with, even though the legality of the order may be open to question. The Collector need not concern himself in the matter as no public interest is affected. The parties concerned may take whatever measures they think fit to have the matters put right. (Board's No. 260 A, dated 10th January, 1890.)

[1876, s. 26]

25. No suit instituted in a Civil Court, after the lapse of four months after the Collector has —

Suits instituted after four months not to affect or stay proceedings for partition.

- (a) made a direction under clause (a) or clause (b) of section 23 ; or
- (b) recorded a proceeding under section 29, by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceedings which may have been taken under this Act for the partition of the estate.

Ruling.

A person bringing a suit under section 42 of the specific Relief Act to stay a partition directed by the Collector under Bengal Act VIII of 1876, on the ground that a private partition has already been come to, must prove not only that there has been a private partition, but also that, under that partition, he is entitled to, and was in possession of, in severalty, some specific portion of the property again sought to be partitioned by the Collector ; and such person is entitled to no declaration affecting the rights of other shares in the parent estate. *Khooban versus Wooma Charay Singh*, 3 C. L. R. 453. distinguished.

Semle—Section 26 of the Bengal Act VIII of 1876 does not bar the right to bring an action, but merely limits the effect of the decree unless the action is brought within a certain time. *Kalup Nath Singh v. Lalla Ramdein* LAL. I. 3. P. 16 Calc., 117.

26. (1) Every decree affecting a parent estate [1876, G. 27.]
Decree made while partition proceedings are in progress. made by a Civil Court after the estate has been declared under Section 29 to be under partition, but before the date specified in the notice served under section 94,—

(a) shall be made in recognition of the proceedings in progress under this Act for the partition of the estate, and

(b) shall be framed in such manner that the decree may be applied to, and carried out in reference to, the separate estates which the Collector in his proceeding recorded under section 29 has ordered to be formed out of the parent estate.

(2) If the effect of any such decree be to declare any person or body of persons to be entitled to any extent of interest in the parent estate in excess of the extent of interest which the Collector in the said proceeding has declared to be held by such person or body of persons, the decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceeding, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings, be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from a proprietor or body of proprietors by private purchase after an estate has been brought under partition under section 29 and on the date on which the decree was passed

and such person or body of persons may apply, as in this Act provided, for the separation and assignment

to him or them of the lands, representing the extent of interest so acquired ;

and, notwithstanding anything contained in section 11, such application shall be dealt with as provided in section 30 ;

and the lands thereupon assigned to the said person or body of persons shall be amalgamated with his or their separate estate.

Ruling.

In a suit for declaration of title in which plaintiff also claimed an allotment of his share which had been refused him by the Collector in a butwarrah then in progress,—*Held* that as it was found that plaintiff's title was established he was also entitled, under S. 5. Regulation XIX of 1814, to a precept to the Collector directing him to award to the plaintiff a share corresponding with that title. *Abdool Reza v. Jebunissa Bibi.* 16 W. R., 34.

[1876, S. 28.]

27. (1) Every decree affecting a parent estate made by a Civil Court after the date specified in the notice served under section 94, in a suit which was instituted as mentioned in section 25,—

Decree made after partition proceedings completed.

(a) shall be made in recognition of the partition proceedings; and

(b) shall be framed so as to give effect to the division of the parent estate into separate estates which has been ordered by the Collector, and so as not to disturb such division.

(2) If the effect of any such decree be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings, the decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors ;

and every person or body of persons so entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate, shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only ;

and the decree shall be executed by placing the person or persons so entitled in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the decree.

28. (1) A Civil Court may at any time direct the Collector, upon an application being made to him in accordance with sections 17, 18 and 19,—

Power of Civil Court to order partition on application being made to Collector.

[186, S. S. 29 and 30.]

- (a) to assign to any person land representing a specified interest in any estate, or in any specified village or tract of land in an estate, to be held by such person as a separate estate ; or
- (b) to divide off from any estate any specified land or villages, and to assign it or them to any person to be held as a separate estate :

Provided that no Civil Court shall in any such case—

- (i) specify the amount of land-revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or
- (ii) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.

(2) The Collector shall assess the land-revenue on every such separate estate in accordance with the provisions of this Act.

Rulings.

1. Section 265 of the Code of Civil Procedure does not apply to a suit for partition of a revenue-paying estate when no separate allotment of revenue is asked for. A Civil Court, therefore has jurisdiction to decree partition in such a case; and a suit for possession, after partition, of a share in part of an undivided estate, in which part alone the plaintiff has a share is maintainable in a Civil Court if no division of revenue is sought. *Debi Singh vs. Sheo Lall Singh*, I. L. R., 16 Calc., 203; *approved and followed*; *Meherban Rawoot vs. Behari Lall Barik*, I. L. R., 23 Calc., 679, *overruled*. *Jogodishury Debia v. Kailash Chandra Lahiry and others*.
Full Bench I. L. R., 24 Calc., 725.
2. The Civil Court may direct partition of a revenue-paying estate when the partition can be carried out without apportioning the Government revenue. 20 W. R., 182.
3. On partition of a certain mehal, lands belonging thereto were excluded by the Collector. It being afterwards satisfactorily found that such lands really belonged to the mehal, and ought not to have been so excluded, it was held that a suit would lie in a Civil Court for partition of the excluded lands on the basis of the former partition. 4. C. L. R., 38.
4. What the parties may do without suit, the Civil Court may do on suit being brought. 2 C. L. R., 134.
5. Partition of lands of a revenue-paying estate made by a decree of the Civil Court is no bar to a partition by the Collector under Act VIII (B. C.) of 1876. But the papers of the Civil Court may, if possible, be accepted by the Collector. (Board's appeal No. 152 of 1897 decided by the Hon'ble Messrs Grimley and Toynbee.)

29. If no objection be made, within the time specified in the notification published under section 21, to an application for partition, or when all objections have been disposed of, and if the Collector has no reason to believe that any obstacle exists to his making the partition as applied for,

he shall direct that the application be admitted, and shall record a proceeding—

Admission of application for partition and procedure thereupon.

[1876, S. 31.]

- (a) declaring the estate to be under partition for the purpose of forming, and assigning to the applicant a separate estate;
- (b) declaring the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants; or, if more than one separate application for separation has been admitted the extent of interest in the parent estate which he finds to be held by every separate applicant or body of joint applicants, respectively;
- (c) declaring the extent of interest which remains to any recorded proprietor or body of recorded proprietors who are not applicants;
- (d) ordering that land proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants; and
- (e) ordering that land proportionate to the interest so declared to remain to any recorded proprietor or body of recorded proprietors who are not applicants shall be left forming a separate estate;

and shall at the same time issue a notice to each of the proprietors by registered post letter informing him that the application for partition has been admitted and that the partition will be proceeded with, and requiring him to register his name and address and to appoint an agent to accept service of process and to make any appearance or application or do any act required or authorized to be made or done by a party to a partition under this Act.

THE ESTATES' PARTITION ACT.

Rulings

2. The Jurisdiction of the Civil Court in matters of partition of a revenue-paying estate is restricted only in questions affecting the right of Government to assess and collect in its own way the public revenue :—*Held* accordingly that the pendency of partition proceedings before the Collector under section 31 of Bengal Act (VIII of 1876) [Corresponding to section 29 of the present Act.] was no bar to a suit for a declaration that under a partial partition effected between the co-sharers portion of land has been separately allotted to the plaintiff. *Zaharun vs. Gouri Sanker*. I. L. R. 15 Cal. 198.

30. (1) At any time after the Collector has recorded a proceeding under Section 29, and before the Deputy Collector has partitioned the land into separate estates under section 57, any recorded proprietor in the estate, other than the original applicant, may apply for the separation of his share.

Subsequent application for separation of another share.

[1876, S. 32 modified.]

(2) The Collector may reject or admit any such application ; and if he admits it may order either that proceedings for effecting such separation shall be carried on simultaneously with the previous proceedings or that compliance with the application be postponed until such previous proceedings have been completed and the shares separated in accordance therewith.

(3) When the consideration of any application which has been postponed under sub-section (2) is resumed, the papers of the previous proceedings aforesaid may be used so far as they are applicable.

NOTE 1:—Under Sec. 32 of the old Law any recorded proprietor other than the original applicant could apply for separation of his share while the partition proceedings were *actually in progress* but this section has limited the period within which such applications may be made. At any time after proceedings under Sec. 29 have been recorded application of such nature can be made before separate estates have been formed under Sec. 57 of the Act. But it is optional at the same time with the Collector to admit or reject the application even if it be made within such time.

NOTE 2:—By the word “papers” used in sub-section (3) it is intended that the whole of the *Nuthee* should be admissible. (*Vide Supplement, Calcutta Gazette, Dated 20th October 1897, Page 4035.*)

Ruling.

- i. Respondent purchased a proprietor's share in an estate after the partition proceedings had been begun, and made an application to the Collector after the proceedings had been completed and submitted to the latter for approval under Section 80 of the Act VIII of 1876, raising objections which the vendors had not raised in the earlier stages of the proceedings. This was rejected by the Collector; on appeal, the Commissioner passed an order which in effect set aside the general arrangement under Section 75. *Held* by the Board that the Commissioner's order was *ultra vires*. Under Section 32 of the Act VIII of 1876 the application must be made while the partition proceedings are *actually in progress*, and not after they have been brought to a close, except as regards the final sanction; and that Section 120 of the Act of 1876 only enabled a Commissioner to return the partition proceedings for the correction of some obvious substantial error of detail, which error must be an ascertained one, the mode of amendment being indicated. (*Board's Proceedings of 26th September 1896. No. 488C. Collection No. 7, File No. 14 of 1896.*)

31. The Collector may refer any application for partition to any Deputy Collector for the purpose of making inquiries and doing any other thing authorised or required by this Chapter : [1876, S. 33 modified.]

Power of Collector to refer application to Deputy Collector.

Provided that every order—

- (a) rejecting an application under section 22,
 - (b) directing, under section 23, that partition proceedings shall proceed or shall be postponed,
 - (c) directing, under section 29, that an application for partition be admitted,
 - (d) made under section 30, or
 - (e) appointing a Deputy Collector under Section 32,
- and every proceeding recorded under section 29, shall be made and recorded, respectively, by the

Collector and not by any Deputy Collector.

32. As soon as the Collector has declared an estate to be under partition as provided in section 29, he may appoint a Deputy Collector to carry out the partition and all or any of the proceedings [1876, S. 34.]

Power of Collector to appoint Deputy Collector to carry out partition.

necessary thereto.

[1876, S. 35
modified.]

33. (1) If, at any time after an order has been passed for making a partition of a parent estate, all the recorded proprietors of the estate present a petition to the effect that they do not wish the partition to proceed, the Collector may, after such enquiry as he considers necessary, strike the partition case off the file, and at the same time require the proprietors to pay all costs incurred in and about the partition.

(2) Any such costs which have not already been levied as provided in section 37 shall be levied in proportion to the shares of the respective proprietors.

NOTE :—By sub-section 1 of this section it is provided that when all the recorded proprietors wish to stop the partition proceedings the Collector should always accede to their wishes.

Ruling.

1. From this section it is clear that a partition case can only be struck off the file by a Collector on a petition from all the recorded proprietors that they do not wish the partition to proceed. The power which is reserved to a Commissioner under section 36 (corresponding to section 34 of the present Act) to quash a partition must be exercised at the Commissioner's discretion with reference to the circumstances of each case. (*Board's Proceedings of 17th September, 1881 Collection 1, File 1648.*)

[1876, S. 36
modified.]

34. (1) If, at any time after an order has been passed for making a partition, it appears to the Commissioner that any sufficient reason exists why the partition should not be proceeded with,

he may, on the report of the Collector or otherwise, after issuing a notice calling on the persons interested to show cause why the partition case should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file.

(2) All costs which have not already been levied as provided in section 37 shall thereupon be levied in proportion to the shares of the respective proprietors.

Ruling.

- (1) When an estate was entered under one number and one Sadder Jamma in the Government rent roll, and the two mouzahs of the estate were jointly liable for the Government-revenue, it was held that there was no legal obstacle to the application of the owner of an eight annas share in one of the mouzahs for a butwarra of his share, and that the whole estate must be considered liable to measurement and assessment under the butwarra proceedings. It was added—"The identity of the separate villages must be considered as having become merged at the time of the permanent settlement in the common responsibility which they jointly share for the Government-revenue of the entire estate. A Butwarra can only be effected under section 6 of the Partition Act, and the separate and distinct manner in which the two mouzahs have been held by perfectly distinct proprietors offers no legal disability in the way of the completion of the Butwarra." Whatever the early history of the mouzahs might have been (with regard to separate engagements), the fact to be regarded was that at the time of the butwarra they constituted a joint and undivided estate. The Board therefore reversed the Commissioner's order that the case should be dealt with under section 36. (*Board's Proceedings of 8th November 1884, No. 248, Collection 1 File 247*).

CHAPTER V.

ESTABLISHMENTS AND COSTS.

- 35.** The Deputy Collector, with the approval of [1876 S. 37]
Power to appoint establishments and prescribe scale of remuneration. the Collector, and subject to any rules made in that behalf by the Board, may appoint such persons as may be needed for the purposes of any proceedings under this Act and prescribe the scale of their remuneration.

- 36.** In any district or division in which partitions [1876 S. 38]
Power to appoint special establishment. are so numerous or extensive as to render necessary the appointment of a special establishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanction of the Board, may appoint such establishment.

[1876 S. 39
modified.]

37. (1) As soon as possible after an estate has been declared to be under partition as provided in section 29, the Collector shall estimate the cost of making the partition; and the amount shall be levied from the proprietors in such instalments and at such times as may be fixed by rules made by the Board.

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in sub-section (1).

NOTE:—The Sub-Section (1) of this section has omitted the words “during the progress of the partition” after the words “the amount shall be levied from proprietors in such instalments and such times” used in section 39 of the Act of 1876. But this does not probably affect the principles enunciated in the case below.

Ruling.

1. Estate No. 1742 Taluk Baharam Khan was brought under partition on the 30th November 1893. The partition was confirmed on the 1st June, 1895, and the proprietors were put into possession of their respective separate estates on the 8th September, 1895. On completion of the partition the total cost of the case was declared under section 42 of the Estates Partition Act (VIII of 1876) to be Rs. 100, and was apportioned amongst the proprietors according to their interest. The residuary sharers Abdul Kadir and Abdul Hamid Khan had 13 annas 9 gundas and odd share in the *Mahal*, and the cost payable by them amounted to Rs. 84 and odd. They having defaulted to pay up the amount, a certificate was prepared and issued against them on the 14th February, 1896. Notice under S. 10 of the Public Demands Recovery Act (1 of 1895) was served on them on the 15th March, 1896, but as they did not pay up the amount, one Eshan Chandra Ray, (who successively purchased in execution of his mortgage decree the whole of the interests of Abdul Kadir and Abdul Hamid in the aforesaid estate, first on 21st May 1895, and then on the 18th July, 1896, but did not take possession of some portion of the estate till 6th March, 1896), was made liable for the costs of the partition which were payable by his predecessors; and by virtue of a certificate under the Public Demands Recovery Act the dues were realized from him. Eshan Chandra Ray then served a notice under S. 424 of the Civil Procedure Code to institute a suit against the Secretary of State for India in Council. On this, the Government Pleader being consulted, he gave out his opinion that section 39 of the

Partition Act authorised the Collector to levy the cost from the proprietors "*during the progress of the partition*"; that Eshan did not become a "proprietor" within the meaning of the Butwarra Act until he was put in possession by the Court of his purchased interest. (*vide* the definition of "proprietor" in clause (xiii) section 4 of the Act of 1876); that as the law did not make the costs a charge on the property the certificate procedure did not apply and the money realized should be refunded. This matter being referred by the Commissioner to the Legal Remembrancer, that officer agreed with the opinion expressed by the Government Pleader and observed that the Collector made a mistake in not levying the costs during the progress of the partition as enjoined by section 39 of the Act. The Commissioner differing from those opinions submitted the papers to the Board with the following remarks:—"I am strongly of opinion notwithstanding the weight of legal opinion on the other side that the suit should be awaited and the refund advised should not be made. It seems to me that the purchaser bought the share in the property with all the liabilities which arose on account of it at the time of his predecessor. The liability to pay the costs of the partition appears to me to be a lien on the property. It is an expenditure incurred to improve the property by converting it from a joint estate to a separate estate. The purchaser obtains the benefit of the improvement without its having been paid for. Such purchases need not be reported under the Land Registration Act (VII. of 1876.) until after six months from the date of their completion, and there is a danger that *Benami* transfer may be made to avoid payment."

The Board referred the case to the Hon'ble the Advocate General Sir G. C. Paul for his opinion. He said:—"I am of opinion that the opinions expressed by the officiating Legal Remembrancer and the Government Pleader are correct. The Commissioner begs the whole question when he states that "the liability to pay the costs of the partition appears to me to be a lien on the property." They are not a lien or charge on the property. The costs of the partition should, under S. 39 of the Act VIII of 1876, have been levied during the progress of the partition from the persons who were proprietors at that time within the meaning of clause XIII, section 4 of that Act." In view of the opinion expressed by the Hon'ble the Advocate General, the Board directed the refund of the money realised. (*Board's No. 627 A, dated 9th December, 1897.*)

38. The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares :

Apportionment of cost of partition.

[1876 S. 40 modified.]

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily.

delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

The Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor or proprietors, shall be paid by him, or them.

Ruling.

As the cost of a partition is regulated, not by the Government revenue or the gross assets or the net profits, but by the area (the maximum being Rs. 36 per 100 acres), it does not seem unreasonable that the area should be made the basis of determining the proportion of costs to be paid by such of the parties. If the circumstances of an estate render it impossible to apportion the expense of the partition in accordance with area, the apportionment should be made in accordance with the amount of the Government revenue payable on account of each of the shares into which it is proposed to divide the estate. (*Board's Proceedings of 13th May 1882, No. 139, Collection 8, File 963*).

[1876 S. 41]

39. Whenever any local inquiry is held by the

Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.

Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector, the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared—

- (a) shall be paid by the person making the objection, or by any one of the proprietors ; or
- (b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them ; or
- (c) shall be deemed to be a part of the cost of the partition.

On completion of partition, total cost to be declared and account adjusted.

40. (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof. [1876 S. 42]

(2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.

41. (1) Whenever it appears to the Lieutenant Governor that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, he may make an order directing that the salary of such one or more Deputy Collectors, as the case may be, shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions. [1876 S. 43 modified.]

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by A Deputy Collector of the lowest grade.

(3) Whenever it appears to the Lieutenant Governor that the said work in any district is so great as to occupy a considerable portion, though not the whole, of the time of a Deputy Collector,

or whenever a special establishment is appointed under section 36,

the Lieutenant Governor may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

Note.—Sub-section 2) corresponds to the second paragraph of section 43 of the Act VIII of 1876. This paragraph has.

been restored as it represents a compromise which was accepted where section 43 of the old Act was agreed to in Council. (Calcutta Gazette, Part IV, April 7, 1897, p. 43.)

Ruling.

1. If, while employed on partition work, a Deputy Collector is promoted to, or confirmed in, an appointment of which the pay is higher than that of a Deputy Collector of the lowest grade, and if his continued deputation to that work is considered necessary, the excess over the pay of a Deputy Collector of the lowest grade is to be paid by Government, and can not be charged to the Estates' Partition Fund. (Board's Proceedings of 5th September 1885, No. 122, Collection 10, File 40.)

[1876 ss. 45,
46, 47, modified.]

42. (1) The Lieutenant Governor may direct that in any district a Fund, to be called the "Estates Partition Fund," shall be formed, into which all sums levied from the proprietors of estates in such district in respect of partitions of their estates shall be paid and from which all costs of making partitions of estates in such district shall, except as provided in section 43, be defrayed.

(2) When the formation of an Estates Partition Fund has been directed in any district, the charges leviable in that district from the proprietors of any estate under partition may, notwithstanding anything contained in the foregoing sections of this chapter, be levied according to a general scale of fees to be fixed by the Board.

(3) Such scale of fees shall be fixed, as nearly as may be, so that the receipt and expenditure of the said Fund shall balance one another, and shall be revised from time to time by the Board so as to secure compliance with this condition.

(4) The said fees shall be apportioned, and the proportionate amount thereof due from any proprietor or proprietors may be increased, in the manner and under the circumstances mentioned in section 38.

(5) The said fees shall be levied from the proprietors in such instalments and at such times as

may be fixed in accordance with any rules which the Board may make in this behalf.

(6) An abstract of the Estates Partition Fund of each district, made up to the end of each financial year, shall be published in the Calcutta Gazette and posted up at the office of the Collector of the district.

43. (1) Whenever any Civil Court makes a decree awarding or declaring any proprietary right in an estate, and requires the Collector to make a partition of the estate, the Court shall, subject to the provisions of sections 38 and 39, at the same time direct either—

Order by Civil Court
for payment by parties of
costs of partition.

[1876. S. 50
modified.]

(a) that the party or parties who has or have withheld the right so decreed shall defray the whole of the costs of the partition or the whole of the fees payable in respect of the partition under section 42, or

(b) that the said costs or fees shall be defrayed by all or any of the parties to the suit in which the decree was made, in such proportions as the court may, upon a consideration of the particular circumstances of the case, deem equitable.

(2) Copies of all orders passed under sub-section (1) shall be transmitted to the Collector for his guidance together with the precept which the Court issues to him requiring him to divide the estate; and the Collector shall levy the said costs or fees from the parties, in accordance with the order, in the same manner and by the same means as if the levy of such costs or fees had been ordered by himself.

CHAPTER VI

PROCEEDINGS UP TO THE DETERMINATION OF THE PARTITION.

"We have recast this Chapter. The Bill, as introduced, provided for the making of a complete survey and the preparation of a record-of-rights, including the determination of the status of all tenants and the decision of all disputes by the Deputy Collector, whose decisions were to be deemed to be correct until the contrary was proved and were to be appealable only to the Revenue authorities.

"Under the Bill for amendment of the Bengal Tenancy Act, which is now before the Council, Revenue Officers are to be deprived of the power of deciding disputes as to possession, right and title, and their orders are not to have the force and effect of decrees of a Civil Court. We think that still less should powers to decide disputes be given them in partition proceedings.

"The determination and recording of the status of tenants are not necessary for the purpose of apportioning the revenue of estates under partition and for this reason, and because the proprietors unanimously object to complicating the proceedings by recording the rights of the tenants, we have omitted the status of tenants from the particulars which the Deputy Collector is to record in making a survey.

"We have provided that the Deputy Collector shall make a survey showing the area of land held by each tenant and prepare a record of existing rents (*i*) as stated by the landlord, (*ii*) as stated by the tenant, and (*iii*) as taken for the purposes of the partition. We have also provided that a copy of extracts relating to their holdings containing these particulars shall be given to the tenants. We think these extracts will sufficiently protect them against the risk of having the partition proceedings made use of to their detriment. We have attached no special evidential value to the entries made by the Deputy Collector in the survey papers and record of existing rents. They may be referred to by the Court as evidence of the contemporaneous admissions or allegations of the parties as to the amount of the rent at the time the record was prepared, and as evidence of what was the Deputy Collector's opinion as to the amount of the rent, and no more. We do not think it necessary for the purposes of the partition, or desirable on general grounds, to empower the Deputy Collector to decide any disputes relating to rent or status in the course of partition proceedings, and have modified the Chapter accordingly." (*Vide* Preliminary Report of the Select Committee, Calcutta Gazette, April 7, 1897, Part IV, Page 43.)

44. Every Deputy Collector making a partition shall, as regards the estate under partition, have so far as they are applicable all the powers exercisable by a Survey Officer under the Bengal Survey Act, 1875, and by a Revenue Officer employed in preparing a record-of-rights under Chapter X of the Bengal Tenancy Act, 1885. [New.]
Ben. V. of 1875.
VIII. of 1885

Powers of Deputy Collector in making a partition.

NOTE.—The words “so far as they are applicable” are inserted because some of the powers exercisable under Chapter X of the Tenancy Act, such as the power of settling rents, cannot be exercised under this Act.

45. As soon as the Collector has recorded a proceeding under section 29, declaring an estate to be under partition, the Deputy Collector shall, subject to the provisions of section 49, make a survey and prepare a record of existing rents and other assets of all lands included in the estate. [New.]

Deputy Collector when to make survey and prepare record of existing rents and assets.

NOTE.—Mark that the words “record of existing rents” are used in this section and other sections of Chapter VI for the words “record of rights.”

46. In making a survey and preparing a record of existing rents and other assets of land under section 45, the Deputy Collector shall ascertain and record the following particulars, namely :—

Particulars to be recorded.

(a) the name of each proprietor, landlord and tenant of the estate, and of every owner of revenue-free land and occupier of rent-free land therein ;

(b) the situation, area and boundaries of the land owned or occupied by each of the said persons, and the character and extent of the interest held by each, and the area of all other land in the estate which is not held by tenants ;

(c) the rent then payable for all rent-paying lands,—

(i) as stated by the landlord,

- (ii) as stated by the tenant, and
 - (iii) as taken by the Deputy Collector for the purposes of the partition; and
 - (d) the assets, if any, of all other lands;
- and shall be guided by such rules as the Board may make under section 121, clause (1).

Ruling.

A Butwarrah Khashra or measurement paper prepared under S. 54 of the Estates Partition Act (Bengal Act VIII of 1876) is not a "record" within the meaning of Section 35 of the Evidence Act (1 of 1872). An entry made therein of the name of a tenant in possession is not admissible in evidence under that section *Mohi Choudhury vs. Dhiro Misraia* 6 C. L. R. page 139, referred to. *Prema Roy vs. Kishen Roy* I. L. R. 25. Cal. 90.

NOTE:—The principle of S. 102, Act VIII of 1885, has been adopted in this Section which is new—Section 102 of the Bengal Tenancy Act (VIII of 1885) runs thus:—

102. Where an order made under Section 101, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following, namely:—

- (a) the name of each tenant or occupant
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, raiyat holding at fixed rates, settled raiyat, occupancy-raiyat, non-occupancy-raiyat or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation, and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- (e) the rent payable at the time the record-of-rights is being prepared;
- (f) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise;
- (g) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- (h) the special conditions and incidents, if any, of the tenancy;

- (i) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority.

47. (1) when the Deputy Collector has made a survey and prepared a record of existing rents and other assets of land under section 45, he shall publish a notification, in a form to be prescribed by the Board, fixing a day on which he will be present in the village, or at a convenient place within limits of distance to be fixed by general or special order of the Board, for the purpose of attesting the survey papers and record of existing rents and other assets. [New:]

(2) On the date fixed by the notification, or on any other date to which the proceedings may be adjourned, the entries made in the record of existing rents and other assets under section 46, or such of them as the Board may by rule prescribe, shall be read out, and corrected or added to as may appear necessary, in the presence of such of the interested persons as are in attendance.

(3) if the correctness of any entry is disputed, the Deputy Collector shall note the statements of such of the persons aforesaid as are interested in the disputed entry and shall, after making such local enquiry, if any, as he thinks fit, pass a summary order declaring what entry shall be accepted for the purposes of the partition.

(4) If the correctness of any measurement is called in question and a fresh measurement is demanded, the Deputy Collector may require the costs of the re-measurement to be deposited.

(5) If the re-measurement shows the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.

Note 1.—By the word “notification” used in this section a general notification is meant, and not a notice to particular persons.

(*Vide Supplement to the Calcutta Gazette, October 20, 1897, P. 4036*).

NOTE. 2.—By sub-section (3) the Deputy Collector is required to note the statements of the persons interested, before passing his order, and it is provided that the said order must declare what entry shall be accepted for the purposes of the partition.

48. When the survey papers and the record of existing rents and other assets have been attested as provided in section 47, the Deputy Collector shall cause a copy thereof to be locally published in such manner and for such period as the Board may by rule prescribe, and there shall be furnished to each landlord and tenant a copy of such of the entries relating to his estate, tenure or holding, as the case may be, as the Board may by rule prescribe.

Note.—(1) It is provided by this section that the survey papers shall be dealt with in the same way as the record of existing rents, that is to say, that they must be published in such manner as the Board may, by rule, prescribe and extract thereof given to landlords and tenants. The principle of section 103 A of the Bengal Tenancy Act involved in this section, which is new. Section 103 A runs thus :—

103 A. 1. When a 'draft record-of-rights' has been prepared, the Revenue Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.

2. When such objections have been considered and disposed of according to such rules as the Local Government may prescribe, and (if a settlement of land-revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under section 104 F, sub-section (3), the Revenue officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this chapter.

Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures, or parts thereof.

[New.]

Power of Deputy Collector to accept previous survey, record-of-rights, measurements or rent-rolls, instead of making a new survey and a record of existing rents and assets.

49. If at any time a survey of the estate under partition or any part thereof has been made or a record-of-rights prepared by an officer appointed in that behalf under the orders of the Government, or

if any measurement papers and rent-rolls are filed under the section 19, or at any time before a survey has been begun under section 45, and if the correctness of such measurement papers and rent-rolls is admitted in writing by all the proprietors, and is verified by the Deputy Collector after testing on the spot, and if the Deputy Collector is satisfied that the land-revenue would not be endangered,

the Deputy Collector may, unless the Collector otherwise directs, and after making any correction which may appear necessary, accept the papers of such survey, or the said record-of-rights, measurement papers or rent-rolls, instead of making a new survey and preparing a record of existing rents and other assets under section 45

50. When the documents referred to in section

48 have been published, or any documents referred to in section 49 have been accepted, the Deputy Collector shall record an order stating that

Record of order fixing of day for determining partition and service of notices.

such documents have been adopted for the purposes of the partition, and shall—

(a) fix a day on which to determine the partition of the lands into the several separate estates,

(b) publish a notification calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and at the same time serve a notice on each of the proprietors to the same effect, and

THE ESTATES PARTITION ACT.

- (c) serve a similar notice on the proprietors of each of the adjoining estates, inviting them to appear and file their objections, if any, if they dispute the possession of any land of the estate under partition.

NOTE:—This section embodies what was contained in section 63 of the Act VIII. of 1876. Now that the General Arrangement is done away with, it is deemed much more necessary that full publicity should be given to the above proceedings. This section has, therefore, made provision both for a general notification and a notice to each individual proprietor.

NOTE:—In clause (c) provision has been made for issuing notice on the proprietors of each of the adjoining estates so that if they have any objection to make under section 88 of this Act, they may do so before the Deputy Collector proceeds under section 57 to determine how the parent estate shall be partitioned into separate estates.

Rulings.

In the case of an estate in which several Mouzahs had completely diluviated since the measurement of 16 years before, and valuable large accretions had occurred in other Mouzahs, none of which were shown in any of the maps or papers, the Board observed (there being apparently a number of small share-holders) that it would be incumbent on the officers making the partition to exercise considerable caution that the Government revenue does not ultimately suffer by the Butwarra, as small shafes, consisting of lands in villages subject to active deluvion, may completely disappear in a few years to the serious detriment of the Government revenue. (*Board's Proceedings of 18th December 1886, No. 85, Collection 5, File 247.*)

Partition was ordered to proceed on measurement and classification which took place 30 years ago. Objections were taken to such partition on the ground of alluvion and diluvion and that culturable lands became useless and bad lands improved. The Lower Court rejected objection on the ground (a) that the objector did not specify the lands (b) and that the objection was not laid till at late stage of the proceedings. The Board held it was undoubtedly the duty of the Butwarra officers to mark off the new road, the alluvion and diluvion and other changes which might have taken place. For the classification, some revision of recorded condition of lands, thirty years ago, was obviously necessary, and appellant had good grounds for objecting to the proceedings which did not include such revision. (*Board's No. 332 A, dated 10th July, 1894.*)

Partition was ordered to proceed on measurement and classification which took place in 1880. In an objection made in the year 1890, against the General Arrangement, one of the grounds was that the quality of lands having considerably changed since the year 1880, the measurement papers of that time should not have been accepted, and acted upon. The Board held that if the objectors could, even at this stage of the case, point out particular plots, which in the former papers, were waste and were now cultivated, or *vice versa*, such objections, if plausible, and *prima facie* probable, could be and should be tested, under section 57 (Act VIII. of 1876), and if found true the measurement papers in this respect corrected, so that the division might be fair at the present moment. (*Board's No. 65 A, 16th February, 1891.*)

CHAPTER VII.

PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

51. (1) If all the recorded proprietors present, on [1876, s. 64.]

Power to allow partition to be made by proprietors themselves or by arbitrators.

or before the day fixed under section 50, a petition requesting to be allowed to make the partition on the basis of the papers adopted by the Deputy

Collector under Chapter VI,—

(a) privately among themselves, or

(b) by arbitration,

the Deputy Collector may grant the request.

(2) If, after such request has been granted, the proprietors or the arbitrators fail to make the partition within such time as may be fixed by the Deputy Collector in that behalf, the Deputy Collector shall make the partition himself.

NOTE:—This section has been brought into accord with section 507 of the Code of Civil Procedure which provides that arbitrators shall be nominated by the parties. It is also provided that the Deputy Collector shall make the partition himself, when the proprietors or the arbitrators fail to do so.

[1876, S. 65.]

52. When a partition has been referred to arbitration, the proceedings shall, except as hereinafter otherwise expressly provided, be conducted in accordance with the provisions of sections 506 to 522 (both inclusive) of the Code of Civil Procedure, so far as they are applicable.

NOTE:—Sections 506 to 522 of Act XIV of 1882, are here inserted at length for facility of reference.

506 If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

509. If the Reference be to two or more arbitrators, provisions shall be made in the order for a difference of opinion among the arbitrators:—

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or

(d) otherwise, as may be agreed between the parties, or if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying or refusing or neglecting or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and, in such case shall proceed with the suit.

511. Where the arbitrators are empowered by the order of Reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire and if, within seven days after such notice has been served, or such further time as the Court may in each case allow no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

512. Every arbitrator or umpire appointed under section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

513. The Court shall issue the same process to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Persons not attending in accordance with such process or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may if it

thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Suppression of arbitration.

When umpire may arbitrate in lieu of arbitrator.

515. When an umpire has been appointed, he may enter on the Reference in the place of the arbitrators—

- (a) if they have allowed the appointed time to expire without making an award, or
- (b) when they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

516. When an award in a suit has been made the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Award to be signed and filed.

517. Upon any reference by an order of the Court the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and such opinion shall be added to and form part of the award.

Arbitrators or umpire may state special case.

Court, may, on application, modify or correct award in circumstances.

518. The Court may, by order, modify or correct an award—

- (a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or
- (b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Order as to costs of arbitration.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,—

When award or matter referred to arbitration may be remitted.

- (a) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration ;
- (b) where the award is so indefinite as to be incapable of execution ;
- (c) where an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds, (namely) :—

Grounds for setting aside award.

- (a) Corruption or misconduct of the arbitrator or umpire ;
- (b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire ;
- (c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit ;

and no award shall be valid unless made within the period allowed by the Court.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

Judgment to be according to award.

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion of such case.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees.

Decree to follow.

No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

53. (1) The arbitrator or arbitrators shall, within a period to be fixed by the Deputy Collector, which period may be further extended by him, deliver to the Deputy Collector a full and complete paper of partition, in such form as the Board may, by rule, prescribe.

Arbitrators to deliver a partition paper.

[1876, Ss. 66 and 70.]

(2) If default is made in complying with subsection (1), the Deputy Collector may withdraw the case from arbitration and may make the partition himself.

[1876, S. 67.]

54. (1) The arbitrator or arbitrators, on delivering the paper of partition as aforesaid, shall be entitled to reasonable fees for his or their services.

(2) The amount of such fees shall be fixed, with the approval of the Commissioner, by the Deputy Collector who made the reference to arbitration, and shall be deemed to form part of the costs of making the partition.

[1876, S. 68.]

55. Every partition made under this chapter by proprietors or by an arbitrator or arbitrators shall be subject to the approval of the Collector and confirmation of the Commissioner.

Provided that no such partition shall be disallowed except—

(a) on the ground of fraud, or

(b) on the ground that the partition cannot be confirmed without endangering the safety of the land-revenue.

[1876, S. 69.]

56. When a partition has been made under this Chapter, the land-revenue on each separate estate into which the parent estate is divided by such partition shall be assessed by the Collector in the manner prescribed by Section 10.

CHAPTER VIII.

MAKING OF PARTITIONS BY THE DEPUTY COLLECTOR, AND APPROVAL THEREOF BY THE COLLECTOR.

[By this Chapter a great modification has been made regarding the procedure to be adopted by the Deputy Collector in preparing separate Estates. In order to simplify and shorten the procedure, and avoid unnecessary delay in partition proceedings the "General arrangement" prescribed in the old law has been altogether abolished. Now, under Section 57 of this Act the Deputy Collector will make allotment of lands into separate estates subject to the approval of the Collector under S. 58. After the approval of the same by the Collector and tender of extracts from the partition paper and publication of a notification as provided in Section 59, the Collector shall cause a notice to be served on each of the recorded proprietors stating that the papers will be submitted at once for confirmation of the partition by the Commissioner.]

57. (1) If no petition is presented under Section 51, ^[1876, Ss. 71, 74, 77, modified] the Deputy Collector shall, on the day fixed under Section 50, or on any subsequent day or days to which the hearing may be postponed by notice posted at his office,—

Procedure where no petition presented under Section 51.

- (i) consult all proprietors who are present, and
- (ii) hear, and, after such enquiry as he may consider necessary, dispose of, any objections which they may urge.

(2) The Deputy Collector shall then proceed to determine how the lands of the parent estate shall be partitioned into the separate estates, and all matters arising out of such partition, and shall cause to be prepared—

(a) a paper of partition, in a form prescribed by rules made by the Board, specifying in detail—

- (i) the lands which he has included in each separate estate, and the area of such lands,

- (ii) the rental of such lands, and the other assets, if any, of each separate estate,
- (iii) the name or names of the recorded proprietor or proprietors of each separate estate,
- (iv) any stipulations which may have been made regarding places of worship, tanks or other matters mentioned in Chapter IX, and
- (v) the amount of land-revenue to be assessed on each separate estate in the manner prescribed by Section 10, and

(b) a map showing the lands which fall within each separate estate and the boundaries of such lands.

(3) In making the partition the Deputy Collector shall be guided by the provisions of Chapter IX, and shall make the partition in the manner which, in his opinion, is on the whole most in accordance with those provisions and most equitable and convenient to all parties concerned.

[1876, S. 75
modified]

58. (1) The partition, as made under this Chapter, shall be submitted for the sanction of the Collector, and he shall by notice fix a day for the consideration of the same.

(2) Every such notice shall be served on the proprietors and shall be published in the manner prescribed by section 104.

(3) The day fixed by the said notice shall be not less than fifteen days after the publication of the notice at the Collector's office.

(4) After hearing and disposing of any objection which may be preferred, the Collector shall pass such orders as he may think proper—

(a) approving the partition, with or without amendments; or

(b) making a new partition; or

(c) returning the papers to the Deputy Collector for amendment of the partition, or for making

a new partition, with such directions as to the Collector may seem fit in regard to the issue of a notice to appear to the proprietors or any of them who are specially interested.

(5) If the papers are returned to the Deputy Collector, the Collector shall, on their re-submission, proceed again to consider the partition as provided in the foregoing sub-sections of this section.

[New]

Ruling.

A Deputy Collector in the exercise of executive functions, is in the fullest sense the assistant and agent for carrying out the views of the Collector, and over his proceedings the Collector is bound to exercise the closest superintendence, and to interfere whenever he thinks proper to do so. The relative positions of Collector and his Deputy are entirely different from those of a Collector and Commissioner, or those of the Commissioner and the Board. (Board's proceedings of 14th May 1881, No. 155, collection 7, File 493.)

59. (1) When the partition has been approved by the Collector, the Deputy Collector shall, after making such alterations as may be necessary in the partition paper or map, or preparing a new partition paper or map, in accordance with the orders passed by the Collector,

[1876, S. 79 modified.]

Duties of Deputy Collector when partition has been approved by Collector, or when collector makes a new partition.

(a) cause to be prepared a separate extract of the portion of the partition paper which relates to each separate estate ;

(b) cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in attendance at the Deputy Collector's office, the extract which relates to such separate estate, and

(c) publish a notification at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not

THE ESTATES PARTITION ACT.

been rendered as aforesaid, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.

(2) If the circumstances of the partition so require an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper mentioned in subsection (1).

(3) The Deputy Collector shall also proceed in the manner hereinbefore provided when the Collector makes a new partition.

[1876, S. 82.]

60. No proprietor who has failed to appear before the Deputy Collector in person or by agent on a day fixed, under section 50 or 57, for the partition of the lands into several separate estates, and no proprietor who has failed so to appear before the Collector on a day fixed under section 58, shall, unless he shows sufficient cause for such failure, be entitled at any subsequent time to make any objection to the orders which may be passed on such days respectively.

* Proprietors not appearing on fixed day not entitled to make objection.

NOTE.—Section 82 of the old Act was imperative; but this section gives opportunity to proprietors to make objections if they can show sufficient cause for failure of appearance required under sections 50, 57 or 58 of the Act. (*Vide supplement to the Calcutta Gazette, October 20, 1897, P. 4034.*)

[1876, Ss. 84, 86 modified.]

61. When a partition has been approved by the Collector, or when he has made a new partition, and after the tender of extracts and the publication of a notification as provided in section 59,

Submission of the papers to the Commissioner after approval of the partition by the Collector.

the Collector—

shall cause a notice to be served on each of the recorded proprietors, stating that the papers will be submitted at once for confirmation of the partition by the Commissioner, and that any appeals or objections must

be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days from the date of the service of the said notice ;

and shall, after the issue of such notice, forward to the Commissioner all papers relating to the partition.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

LANDS HELD IN COMMON TENANCY.

62. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors and with the provisions of this Chapter. [1876, S. 87.]

Separate estates to be made compact.

Ruling.

Each party to a Butwarrah need not have the same quantity of land, nor should the land awarded be always in exact proportion to the Jumma paid. The object of the Butwarrah being to divide the lands in as compact a form as possible one party may have to pay the Jumma on a smaller area than another, though on more valuable land. Aftaboodeen vs. Shumsooddeen Mullick, 18 W. R., 461.

63. In selecting the villages or land to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from— [1876 S. 88.]

Circumstances to be considered in making partitions.

(a) situation ;

(b) the vicinity of roads, railways or navigable rivers or canals ;

- (c) the nature and quality of the soil and produce ;
 - (d) the quantity of cultivable and uncultivable waste land ;
 - (e) the facilities for irrigation ;
 - (f) the state of embankments and water-courses, and
 - (g) liability to accretion and diluvion ;
- and any other circumstances affecting the value of the land.

Rulings.

The claim for contiguity applies only to lands within the estate under partition. It is therefore not proper and valid to allot such lands to a proprietor because they are contiguous to his lands of another village in another estate. (*Board's No. 320 A, dated 1st August, 1889*).

2. Where a party concerned objects, in appeal, to a partition of land fairly allotted according to value, as not having consulted convenience, it is not enough to show that appellant's own convenience would have been better consulted by a different arrangement. He is bound to show some arrangement which would better satisfy all parties, and be more equitable for all. *Summun Jha vs. Bhooput Jha. 18 W. R., 498.*

[1876, S. 89.]

64. (1) If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate of another proprietor, the owner of the house may retain occupation thereof, with the buildings and grounds immediately attached thereto, upon agreeing to pay rent annually in perpetuity for the land occupied by the house, buildings and grounds to the proprietor of the separate estate in which such land is included.

(2) The limits of the land so occupied and the rent to be paid for it shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.

(3) In every such case a defined pathway shall, as far as possible, be secured to the owner of the house,

leading from the house to some portion of the separate estate allotted to him.

NOTE.—This section declares the respective rights of proprietors when a dwelling-house belonging to one is situated on land allotted in the course of partition to another. The Select Committee carefully and exhaustively considered the question whether a section on the same lines should be introduced into the Act dealing with buildings other than dwelling-houses, and came to the conclusion that it would be inexpedient to do so. (*Vide Calcutta Gazette, April 7, 1897, Part IV., P. 45.*)

65. Whenever the Deputy Collector thinks fit, he ^[1876, S. 90.] may apply the provisions of section 64 Power to apply section 64 to gardens, etc. to gardens, orchards, land planted with bamboos, and any other land which in his opinion is of special value to the proprietor in whose occupation it is found to be, in consequence of improvements made by such proprietor or of the particular use to which such land is put.

66. The rent fixed in perpetuity on any land by ^[1876, S. 91, modified.] the Deputy Collector under section 64 or section 65 shall be deemed for the purposes of the partition, to be the assets of such land. Rent for land fixed under section 64 or 65 deemed to be the assets of the land.

67. When the dwelling-house of one proprietor, ^[1876, S. 92.] with the buildings and grounds immediately attached thereto, has been included in the separate estate of another proprietor, and the rent to be paid in perpetuity for the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition,

the first-mentioned proprietor may apply to the Deputy Collector for permission to redeem the rent so fixed, and the Deputy Collector shall give such permission unless he is of opinion that the redemption would endanger the safety of the land-revenue for the payment of which the separate estate in which such dwelling-house, buildings and grounds have been included will be liable.

1876, S. 93,
modified.]

68. (1) If the Deputy Collector gives permission as aforesaid, he shall certify the amount payable in redemption of rent. amount payable by the applicant in redemption of the rent.

(2) Such amount shall be ten *per centum* above the sum which would be required to produce, in interest at four *per centum per annum*, an annual sum equal to the said rent.

NOTE.—This section modifies the law as provided in section 93 of the Act of 1876. In determining the amount to be paid by the proprietors, the Government stock was the basis of interest under the old law; but this section has laid down a fixed rule in ascertaining the amount to be paid. By this rule to redeem one rupee as rent the amount payable by the applicant will be Rs. 27-8 as.

[1876, S. 94.]

69. The amount certified under section 68 may be paid to the Deputy Collector at any time before, but not after, possession is, under section 94, given to the several proprietors of the separate estates allotted to them.

[1876, S. 95.]

70. On receipt of such payment, the Deputy Collector shall give notice to the proprietor in whose separate estate the land is situated—

Notice of payment to be given, and land to be held rent-free.

- (a) that such payment has been made;
- (b) that the sum will be paid to him or to his authorized agent on application, and
- (c) that, from the date on which possession as aforesaid is given, the proprietor who has redeemed the rent of such land will be entitled to hold the land as a rent-free tenure secured against the proprietor to whom the notice is given and against any auction-purchaser at a sale for arrears of revenue, including the Government;

and from such date the land shall be so held as a rent-free tenure.

71. The Deputy Collector shall at the same time ^[1876, S. 96.] give notice to the Collector of the district of the creation of such tenure, and the Collector shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act XI of 1859 (*an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency*) or by any similar law for the time being in force.

Collector to register the
rent-free tenure.

Section 42 of the Act XI of 1859 runs thus :—

42. When the application is for special registry, the Collector shall serve and issue the notices prescribed in the last preceding section. If within the limited time no objection is made, the Collector shall cause any enquiry that he may deem necessary for the security of the Government revenue to be made; and if he is satisfied that the Government revenue of the parent estate is sufficiently secured so far as it may be affected by the tenure or farm in question, he shall report the case to the Commissioner, who, if also satisfied on that point, shall direct the tenure or farm to be registered according to the application; otherwise the application shall be rejected. If within the limited time any recorded proprietor or any party interested not being a proprietor object to the registry, the Collector shall examine the person so objecting or his authorized agent, and if it shall appear to him that such person has probable ground of objection shall suspend proceedings, and shall refer the parties to the Civil Court; otherwise he shall proceed as if no objection had been made. If the decision of the Civil Court be in favour of the applicant, the Collector, on the presentation of a copy of the final decree, shall proceed as above provided for cases in which no objection is made within the limited time.

72. When two or more of the separate estates consist of the same proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of land, ^[1876, S. 97.]

Drawing of lots for
equal shares.

unless the recorded proprietors of the equal shares agree among themselves as to the allotment of the equal separate estates and present a petition to that effect, or

unless for any other reason the Deputy Collector with the sanction of the Collector, thinks proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

[1876, S. 98.]

73. (1) When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate ;

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn ;

and may cause lots to be drawn in like manner as often as he thinks proper for such purpose.

(2) After lots have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such partition in such position as the Deputy Collector may think proper.

Illustrations.

(I).—The partition of a parent estate is being made into the following shares :—

3 annas	3 annas.
4 annas	1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas and 1 anna shares may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand and the proprietors on the other hand of the aggregate share made up by taking together the 3 annas share and the 1 anna share.

II.—The partition is being made of a parent estate into the following shares :—

6 annas. 3 annas.

4 annas. 2 annas
 1 anna.

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining sharers; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly by lot.

74. The Deputy Collector may, by notice, require any proprietor, in respect of whose share lots are to be drawn as provided in section 72 or section 73, to attend at the office of the Deputy Collector

Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.

[1876, S. 99.]

in person or by authorized agent, at a time to be fixed by the Deputy Collector, for the purpose of drawing lots ;

and may similarly require the proprietors of any shares which he may have ordered to be formed into an aggregate share for the purpose of drawing lots, jointly to appoint an agent to draw lots, on their joint behalf ; and if at the time fixed for drawing such lots, such proprietors have failed to agree to any such joint appointment or fail to cause the attendance of an agent authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

[1896, S. 100.]

75. If any proprietor or proprietors fail to comply

In default, Deputy Collector may appoint a person to draw lots.

with a requisition of the Deputy Collector under section 74, the Deputy

Collector may appoint a person to draw lots on behalf of such proprietor or proprietors.

Lands held in severalty.

[1876, S. 101.]

76. (1) When the lands of an estate have been

Partition according to separate possession, and apportionment of land-revenue.

divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor is, in pursuance of such arrangement, in possession of separate lands held in severalty as representing his interest in the estate, the joint application presented under section 7 may be to the effect—

(a) that a partition of the estate be made by assigning to each proprietor or to two or more proprietors jointly, as his or their separate estate or estates, the lands of which they are in separate possession in pursuance of such arrangement, and

- (b) that each separate estate so formed be made liable for such portion of the entire land-revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

(2) The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form will be sufficient to secure the payment of the annual amount of land-revenue for which it is proposed to make such separate estate liable. [1876, S. 102 in part.]

(3) If the Deputy Collector is not satisfied that the assets of each such separate estate will be sufficient as aforesaid, or that, with reference to the circumstances of the case, the partition of the land and the assessment of the land-revenue, thereon may be made in the manner proposed without endangering the safety of the land-revenue, he shall reject the application, unless all the recorded proprietors agree that the land-revenue for which the parent estate is liable shall be apportioned among the separate estates so to be formed in such a manner that the safety of the total amount of the land-revenue shall not be endangered. [1876, S. 104, modified.]

NOTE:—This section has been so formed as to make it apply only where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors. There were similar restrictions in the old Act also.

Ruling.

Under section 32 of Reg. XIX. of 1814, it was held that if the parties have divided the lands without agreeing as to the share of the Government revenue to be paid by them respectively, all the Collector has to do, when a partition has been applied for, is to make an assignment of the revenue in proportion to the interest of each share-holder. If they have divided the lands and arranged amongst themselves as to the portion of Government-revenue which each is to pay, it is open to the Collector to accept or reject that arrangement. The Civil Court has nothing to do with the matter. 2 C. L. R., 134.

[1876, S. 106
modified.]

77. Whenever the Deputy Collector who is appointed to carry out a partition finds that, in pursuance of a private arrangement, formally made and agreed to by all the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate parcels of land held in severalty as representing portions only of their respective interests in the parent estate, while other land of the parent estate is held in common tenancy between such proprietors, then, notwithstanding anything contained in section 7, a joint application shall not be required, and the Deputy Collector shall allot to the separate estate of each proprietor the land of which such proprietor is found to be in possession in severalty in accordance with such private arrangement.

Explanation.—Land held in the occupation of the several proprietors of an estate as *sir*, *khamar* or *nij-jote*, or under any other similar denomination, shall not be deemed to be land held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a *bonafide* division, by private arrangement among the proprietors, of land held by tenants.

Ruling.

In a suit for partition, the land in dispute being in the exclusive possession of a single co-sharer, should fall as a whole in the share of one or other of the co-owners, and not be subdivided among them. *Puddononee Dassee vs. Dwarka Nath Biswas.*
25 W. R. 335.

[1876, S. 107.]

78. Notwithstanding anything in section 77, the Collector may cause any transfer of land agreed to by the parties to be made from the possession of one proprietor to that of another.

*Lands held in common tenancy and Lands held
in severalty.*

79. Places of worship, burning-grounds and burial-grounds which have been held in common previous to the partition of an estate, and land of which the proceeds have been assigned by the proprietors jointly for religious, charitable or public purposes, shall continue to be held in common unless the proprietors otherwise agree among themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition. 1876, S. 108.1

Places of worship,
etc.

Rulings.

1. A decree directed partition of a family dwelling-house with its appurtenances, including a *Poojahdalan* and court-yard adjoining it. In execution of that decree, the Civil Court Ameen, at the request and with the consent of two out of three co-parceners, did not partition the *Poojahdalan* and court-yard. To this the third co-parcener objected, but her objection was overruled by the lower Courts, and it was directed that the property in question should remain undivided. *Held* that the Court would be disinclined to order the property to be divided without giving the co-parcener or co-parceners who might wish to keep it entire an opportunity of doing so. *Held per* White, J., that having regard to the form of the decree, it was not open to the Court executing it to order that any part of the property should remain joint, except with the consent of all the co-parceners who were parties to the suit. *Seemle per* Mitter, J., that the lower Courts were not precluded by the decree from dealing with the property in the mode in which they had done. *Raj Coomaree Dasee vs. Gopal Chunder Bose.* I. L. R., 3 Cal., 514.
2. Where, in a suit for partition, possession was sought of a definite share of a property consisting a number of houses,—*Held* that the principle in such cases is, that if a property can be partitioned without destroying the intrinsic value of the whole property or of the shares, such partition ought to be made; but where partition cannot be made without destroying the intrinsic value of the property, then a money compensation should be given. *Ashanulla vs. Kali Kinkar Kar,* I. L. R., 10 Cal., 675.

[1876, S. 109.]

80. (1) Tanks, wells, water-courses, reservoirs and embankments shall be deemed to be attached to the land for the benefit of which they were originally made.

Tanks, wells, water-courses, reservoirs and embankments.

(2) In cases in which, from the extent, situation or construction of any such works, it is found necessary that they should remain the joint property of the proprietors of two or more separate estates, the paper of partition shall specify, as far as the circumstances admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

NOTE.—In Sub-section (1) reservoirs have been added to the list of works which are also to be deemed to be attached to the land for the benefit of which they were originally made.

Ruling.

It was held by the Sadder Dewani Adalat that the means of irrigation, which were common to all the cultivators of a village when that village was held jointly by two proprietors, were not effected by the division of the village into two distinct portions according to the respective shares of those proprietors; neither could one proprietor stop the flow of water to the lands of the other, in consequence of the channel formerly used for that purpose running through the lands now held exclusively for one of them. S. D. A., 1860, P. 554.

[New]

81. (1) No tenure or holding shall be split up for the purposes of a partition unless it is reasonably necessary to do so in order to effect an equitable partition.

Splitting up of tenure or holding and apportionment of rent thereof.

(2) If a tenure or holding be split up as aforesaid, the total existing rent thereof, as ascertained under Chapter VI, shall not be altered, but shall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the

Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

NOTE.—Following the principles of Chapter VI, it has been provided that notice shall be served on the tenants, and their objections heard, before a tenure or holding is split up for the purposes of a partition. The apportionment made by the Deputy Collector will not be binding on the tenants or landlords concerned, and will only be evidence of what, in the Deputy Collector's opinion, the fair apportionment should be.

82. When the Deputy Collector finds in a parent [1876, S. 110.]

Land held rent-free not to be divided, except with consent of the recorded proprietors.

estate land which is claimed to be held rent-free and for which no rent is actually paid, (whether the proprietors of the estate do or do not claim a right to receive rent from the land), he shall not make any division or assignment of such land among the separate estates, but shall specify in the partition papers and proceedings that such land is left appertaining jointly to all the separate estates which are formed out of the parent estate, in the proportion which each separate estate bears to the parent estate: Provided that such land or any of it may be allotted among the different separate estates with the consent of all the proprietors of the parent estate.

NOTE.—For the words "*land which is actually held rent-free*" used in section 110 of the Act of 1876, the words "*land which is claimed to be rent-free and for which no rent is actually paid*" have been substituted. The wording of the present Act appears to be a more correct description of what is intended.

Rulings.

1. The lands of an estate were made up with the lands of a rent-free holding. The estate having come under partition a question arose how the Collector should carry on the partition. The matter having been referred to the Legal Remembrancer

that officer gave as his opinion the following:—"The word 'Estate' is distinctly defined in the Partition Act, and that definition must prevail wherever the word occurs through the Act. The Collector has no jurisdiction to partition "Lakheraj" lands—that is work for the Civil Court. He cannot, therefore, in any way, bind the Lakherajdars to perform the first duty imposed by section 112 (corresponding to section 84 of this Act) namely to portion off the proportion of the joint lands which would be properly coming within the estate he is partitioning. If the Lakherajdar himself in an effectual manner broke up the joint holding and abandoned to the estate the exclusive possession of a definite area which the estate accepted, then the portion so falling exclusively within the estate might be partitioned by the Collector among the owners of the estate. But otherwise the Collector cannot interfere with the joint lands." (*Board's Proceedings of the 19th April, 1890. No. 71, Collection 7, File 10 of 1890.*)

2. This section does not apply where fractional part of specific land is held rent-free. (*Board's 158 A, 17th March 1897.*)
3. The production of a Lakheraj Sanad is not necessary to prove that land is held rent-free. The fact may be legally established by long and uninterrupted possession without payment of rent. *Dhunput Sing vs. Russomotee Chowdhurani*, 10 W. R. 461.
4. A Zemindar in 1830 granted rent-free 22 Beeghas of land out of his Zemindari to A, who was to make a tank, the use of which was to be devoted to the public. In February 1862, a successor to the grantor in the Zemindari sought to resume the land, on the ground that the original "rent-free" grant was null and void, it having been made without the sanction of Government.

Held per Norman, Pundit, and Levinge, J J., (Trevor and Loch, J J., dissenting), such a grant was valid. Piziruddin vs. Madhu Sudan Pal Chowdhry. (F. B.) 2 W. R. 15.

5. Where no rent has ever been fixed on, or paid for a tenure, and the holder has been in possession for more than twelve years after the right to assess accrued to the Zemindar, he is entitled to hold rent-free. *Abhoj vs. Kally. I. L. R., 5 Cal. 949.*
6. A grant for a road used annually for the *Rathajattr* is valid and not assessable with rent, the grant being for a public purpose. *Hurrenarain Gossain vs. Shumbhoo Nath Mundul. 1 W. R. 6.*
7. In suits for the resumption of lands alleged by the defendant to be Lakheraj, the burden of proof is in the first instance on the plaintiff to show that lands are *mal*. The fact that the defendant is a tenant of the plaintiffs is a matter to be taken into consideration by the Court in determining whether on

the facts of the case, the plaintiff has made out a *prima facie* case; but unless the Court finds that the plaintiff has made out a *prima facie* case, judgment should be given for the defendant. *Harihar Mukhopadhyaya vs. Madhab Chandra Babu*, 14 *Moore's I. A.*, 153; *Akbar Ali, vs. Bhyea Ram Jha*, 11 *L. R. 6 Cal.*, 666, and *Newaj Bundopadhyaya vs. Kali Prosonna Ghose*, 1. *L. R. 6 Cal.*, 543 cited. *Bacharam Mundal vs. Peary Mohan Banerjee*, 1. *L. R.*, 9 *Cal.*, 813.

8. In a suit for resumption of lands, where the defendants allege that the lands are Lakheraj, the *onus* is on the plaintiff, in the first instance, to show that the lands are *mal*, and if he fails to make out a *prima facie* case the suit should be dismissed. *Narendra Narain Ray vs. Bishnu Chandra Das*, 1. *L. R.*, 12 *Cal.*, 182.
9. There is some difference of opinion as to whether the term "rent-free" is equivalent to "revenue-free". Sir B. Peacock, C. J. Jackson and Macpherson J.J. *Held*, that a rent-free tenure granted by the Zemindar was not "revenue-free" within the meaning of S. 10, Reg. XIX of 1793, and that such a tenure could not be resumed or assessed by the heir of the grantor or by a private purchaser of the Zemindary. *Mahamed vs. Asadunnisa*, 9 *W. R.* 1, *F. B.*

83. (1) When the Deputy Collector finds in a parent estate any land which is held at a fixed rent on a patni or other permanent intermediate tenure created by all the proprietors of the estate or admitted by all the recorded proprietors to have been so created, he may either—

[1876, S. 111, modified.]

- (a) assign such land and the assets thereof entirely to one or more of the separate estates formed out of the parent estate; or
- (b) leave such land unassigned to any separate estate, and specify in the partition paper and proceedings that the land is left appertaining jointly to all the separate estates which are formed out of the parent estate in the proportion which each separate estate bears to the parent estate.

(2) In the event of such land being so left unassigned, the Deputy Collector shall assign to each separate estate such share of the rent of the tenure as

bears the same proportion to the entire rent of the tenure as the separate estate bears to the parent estate.

(3) In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the land comprised in the tenure, and all other circumstances of the case.

Rulings.

1. No tenures, the existence of which is not admitted by all the recorded proprietors as having been created by them all, can be recognised in making a partition. The lands comprised in such tenures must for the purposes of partition be regarded as being ordinary *Ryoti* lands and allotted accordingly. (*Board's No. 377 A, dated 9th September, 1889.*)
2. A joint and undivided estate having been subjected to private partition, 4 Bighas which were in the portion held by A, were granted by him in Mokurari. Subsequently on the application of the parties, the Collector made a regular partition, by which 2 Bighas of the Mokurari lands were allotted to the other sharers, who refused to recognise the grantee's Mokurari rights for that portion of the land, contending that, as under the private partition all the 4 Bighas were in the share of the grantor, the loss of rent should be on him, and that the Collector's butwarra could not transfer 2 Bighas with the Mokurari or smaller rental to the other shares. *Held*—that the grantor's Mokurari title could not be got rid of by the butwarra, and that he was entitled to recognition by the other sharers. *Ahmedoollah vs. Ashrudd Hossein.* 13. W. R. 447.
3. The plaintiff was proprietor of an entire estate paying an annual revenue to Government of Rs. 2,444. In 1854 his father gave a *putni* lease of an undivided six annas share of the estate to the defendants' predecessors in title. The plaintiffs alleged that the lands being held *ijmali*, although he and the defendants collected separately from the tenants their respective shares of the rent, difficulty and inconvenience had arisen in the management of the property, and he therefore sued to have his ten annas share of the land divided by metes and bounds from the six annas share of the *Putnidars*, the land of the entire estate remaining liable as before for the entire amount of the Government revenue payable in respect of it.

Held, by the Full Bench that the plaintiff was entitled to a decree for partition. *Hemdri Nath Khan v. Ramani Kanta Ray.* I. L. R. 24 Calc. 575.

84. When any land is held in common between [1876, S. 112.]

Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.

the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common land of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common land ;

and all the provisions of this Act in respect of the allotment, between the shareholders in one estate, of land which is held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common land to the estate under partition ;

and, in respect of the service of notices, the hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and all other proprietors of estates who have an interest in the said common land, shall be deemed to be joint proprietors of a parent estate consisting only of the land so held in common :

Provided that all costs of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be costs of making the partition of the estate which is under partition, and shall be leviable, as provided by this Act, from the proprietors of such estate ; and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such costs. •

Rulings.

1. The words "any land" in the first clause of the section may be held to mean "all the lands" of two or more estates held in common by several proprietors. (*Board's proceedings of 2nd September 1882. No. 210, collection 7, File 2209 and of 18th July 1885 No. 264, collection 5, File 385.*)
2. An application having been made for the partition of an estate, a portion of the assets of which consisted of a fractional interest in the rents of a mouzah which was held in common with four other estates in the Collector's register, it was considered by the Board that this section did not cover the case. (*Board's*

proceedings of 20th February 1886, No. 97, Collection 2, File 630.)

3. Unless the Collector has declared the extent of interest which the proprietors of the parent estate are supposed to have in all the common lands of the several estates, no proceeding can be carried out under this section. (Board's Proceedings of 8th January 1887, No. 228, Collection 7, File 228.)
4. The proceedings under this section should invariably be made after notice issued on the proprietors of the combined estates. (Board's No. 404 A, dated 6th August 1895).
5. This section applies to cases in which lands are held in common between the proprietors of two estates, one of which is under partition. But if both of them are under partition, the lands are not held in common with estates not under partition, in that case this section does not apply. (Board's No. 673 A, dated 11th September, 1896.)
6. Proceedings under this section must be drawn first and all other things to be done subsequently, (Board's No. 174 A, dated 25th April, 1892, appeal No. 193 of 1892. Dyamyeer Dassya applt.)

[1876, S. 113
modified.]

85. Notwithstanding anything contained in section 84, if it appears to the Collector that the proceedings for any such division have been unnecessarily delayed and the cost of such division enhanced, by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him,

the Collector may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost ;

and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

[1876, S. 114.]

86. Every allotment made under section 84 shall be submitted for the approval of the Collector, who may confirm, amend or reject the same, and, if he rejects it, may make or direct to be made another allotment.

Allotment made under Section 84 to be submitted to the Collector.

87. When any allotment made under section 84 has been approved by the Collector, the land so allotted shall be dealt with in every respect as if it were held in common tenancy by such of the proprietors of the estate under partition as were found to hold interests in the common land. [1876, S. 115.]

88. (1). If a dispute or doubt is found to exist as to whether any land forms part of a parent estate, the Deputy Collector shall, after due notice to the parties interested, enquire into the fact of possession, and shall report his conclusions to the Collector; and thereupon the Collector shall dispose of the matter as follows :— [1876, S. 116. modified.]

- (a) he may order that the partition case be struck off the file, if such an order appears to him advisable, and whether the possession of the disputed land is with the proprietors of the parent estate or otherwise; or
- (b) he may order that the partition shall proceed, and that the disputed land be treated as part of the estate under partition, if the possession of such land is with the proprietors of the parent estate and the claim of the other parties to the right in such land appears to him untenable; or
- (c) he may order that the partition shall proceed, but that the disputed land shall not be treated as part of the estate under partition, if the possession of such land is with the other parties and the claim of the proprietors of the parent estate to the right in such land appears to him untenable :

Provided as follows :—

- (i) If a claim to land alleged to be in dispute is filed after the Deputy Collector proceeds under section 57 to determine how the lands of the parent estate shall be partitioned into

THE ESTATES PARTITION ACT.

the separate estates, the claim shall not be enquired into under this section unless the delay on the part of the claimant is explained to the satisfaction of the Deputy Collector ;

- (ii) no partition shall be made in any case mentioned in this section if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate at any subsequent time would, in the opinion of the Collector, endanger the safety of the land-revenue for which such estate would be liable after the partition.

(2). If a partition case is struck off the file under clause (a) of this section, no fresh application for partition shall be admitted unless and until the applicant shows that the dispute or doubt aforesaid has been decided by a Court of competent jurisdiction, or has been amicably settled ; but, if a fresh application is admitted, the proceedings shall be revived from the point at which they were interrupted.

NOTE :—By the old law objections under this section could be made at any stage before the confirmation of the partition. (Vide Board's Circular No. 8, of June, 1882.) In order to curtail that right and to hasten the procedure it has been provided that objections under this section shall not be enquired into after the Deputy Collector has proceeded to determine separate estates under S. 57 of the Act, unless the claimant can show, to the satisfaction of the Deputy Collector, the reasons for his delay.

Rulings.

1. While the partition proceedings of an estate were in progress, an objection was raised by the owner of another estate that his lands were included in the measurement of the estate under partition. Thereupon the Deputy Collector held a local enquiry, and it was found that the proprietors were in possession of a portion only of the lands claimed by the objector, and that the objectors were in possession of the rest of the land under objection. The Commissioner in appeal considered that the claims of the objectors could therefore not be said to have been wholly untenable, and held that

the Collector had no option but to strike the case off the file. The construction which the Commissioner had put on this section was one in which the Board found themselves unable to concur. They observed that the object of this section was to provide a procedure in cases where there was a dispute as to whether any lands formed part of the parent estate "clause 1 provides for local enquiry by a Deputy Collector as to possession; Clause 2 empowers the Collector in case where he thought fit to do so to order the partition to be struck off the file, quite irrespective of the question whether possession be with the proprietor of the parent estate or not; Clause 3 gives the Collector the alternative power in cases where he shall find that possession of the disputed land is with the proprietor, and that the claim of other parties to the right is untenable, to order the partition to proceed. The Board held that the fact that possession of only some of the lands claimed might be given to the proprietors did not effect the question in any way. The Board therefore held that the construction put by the Commissioner on clause 3 of this section was an erroneous one. They, however, in consideration of the numerous disputes existing as to the lands which formed part of the estate, ordered under the second clause of this section that the partition should be struck off the file. (*Board's Proceedings of 14th March, 1885. No. 399, Collection 5, File 1672.*)

2. Rights of easement are not affected by partition. Mere possession in the exercise of a right of easement cannot, therefore, be a ground for objection under S. 116. unless the claimant can show that the lands appertain to his estate. (*Board's No. 526 A, dated 13th December, 1890.*)
3. If any objection is made under this section for a very small area, the partition cannot be struck off but shall be allowed to proceed by excluding the lands claimed. (*Board's decision in Appeal No. 208 of 1889-90. Ram Tannu Das—appellant.*)
4. No appeal lies to the Board from an order of the Commissioner passed under this section. It has been contended that clause (a) of section 113 of this Act (S. 144 of the previous Act) allows one but it seemed to the Board that an order under this section is not an order putting an end to proceedings for effecting a partition within the meaning of that clause. (*Board's No. 148 A, dated 3rd April, 1890.*)
5. A Butwarra Amin, in proceeding to measure certain lands in the course of proceedings connected with the partition of an estate under Bengal Act VIII of 1876, was obstructed by certain persons who claimed the lands and objected to their being measured. The lands were stated, in the report of the Amin to be common land of estate No. 546, and of certain other estates. The persons who obstructed him were not

co-sharers in that estate, and contended that the land, sought to be measured, had been divided amongst the *Maliks* of the different estates, and different portions of it had been held separately by them. The persons so obstructing the Amin, were charged with an offence under section 186 of the Penal Code, the Deputy Collector in charge of the Butwarra proceedings being of opinion that section 112 of the Act applied, and that the Amin was entitled to measure the land. The accused were convicted under section 186 I. P. C.

Held, that section 112 is limited to cases where the community of interest in the land in dispute between the proprietors of estate under partition as a body and the proprietors of other estates is admitted. When this is not admitted the provisions of Section 116 apply.

Held further, that, as there was no evidence to show that such community of interest was admitted, the accused were entitled to the benefit of the doubt, and to have the case treated as one under section 116, and that as the procedure laid down in that section had not been followed, the Amin had no power to measure the lands, he could not be said to be a public servant acting in discharge of public functions, and that the conviction must consequently be set aside. *Lillah Singh vs. Queen Empress.* I. L. R. 22 Calc., 286.

89. If, after a partition has been completed in pursuance of an order passed by the Collector under section 88, clause (b), the proprietor of any separate estate is dispossessed by a decree of a Court of competent jurisdiction of any land which has been assigned to his estate by the partition,

1876, S. 117.]

Procedure when partition completed in pursuance of order under section 88, clause (b) and proprietor of an estate dispossessed of any land by decree.

the partition shall not be disturbed, but such proprietor shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession ;

and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the dispossession does not fall.

Note.—Different principle is enunciated in the following case. In a suit for partition the parties under a *bona fide* mistake included in the division certain property which did not belong to the family, but was held in mortgage from a third person who subsequently brought a suit for redemption and recovered it from the party to whom it had been allowed of the partition. *Held* that the party who had lost the share was entitled to claim a re-partition. *Maruti vs. Rama*. I. L. R. 21 Bomb. 323.

CHAPTER X.

PROCEDURE BEFORE THE COMMISSIONER UP TO THE • COMPLETION OF A PARTITION.

90. (1) If it appears to the Commissioner that the ^[1876 s. 119 modified] proceedings of the Collector should be amended, or if an appeal or objection is presented within the time allowed by section 61, the Commissioner shall, by order, fix a day (not being less than thirty days from the date of such order) for hearing and disposing of the case, and shall cause notice of such day to be served through the Collector on all the parties.

(2) On the day so fixed, or on any subsequent day to which the hearing of the case may extend or is postponed by a notice posted up in his own office, the Commissioner shall, after hearing and disposing of all appeals and objections, and calling for any further information which he may consider necessary, either confirm the partition as approved or made by the Collector, with or without amendments, or return the papers of the partition to the Collector for any amendments which the Commissioner may think proper to be made.

(3) If the papers are returned to the Collector for amendment, the Collector shall proceed to make the required amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy Collector, and shall thereafter return the papers to the Commissioner, who may then confirm the partition.

NOTE.—This section is an improvement of the old law. It requires the service of a notice through the Collector on all the parties, instead of the publication of a general notification under S. 119 of the Act of 1876. Cal. Gazette, April 7, 1897, Part IV, P. 45.

[1876 S. 118] **91.** If it does not appear to the Commissioner that the proceedings of the Collector require amendment, or if no appeal or objection is presented within the time allowed by section 61, the Commissioner may proceed to consider the case without issuing any notice, and may confirm the partition as approved or made by the Collector.

[1876. S. 121] **92.** The Commissioner may, before confirming a partition, return the papers for amendment or enquiry as often as he thinks fit, and as often as he so returns them the procedure prescribed in the foregoing sections of this chapter shall be applicable.

[1876, S. 122 modified] **93.** (1) After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board, if such order does not set aside but maintains, with or without amendments, the partition as confirmed by the Commissioner,

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be.

(2) If the partition as so confirmed or sanctioned involves any amendments which may conveniently be made on any extracts of the partition paper or on any maps which have been prepared and delivered to recorded proprietors under section 59, the Collector shall cause a

notice to be served on every recorded proprietor whose estate is affected by such amendments, requiring him to produce such extracts and maps in order that such amendments may be noted on them ;

and, if the alterations made in the partition as so confirmed or sanctioned be such as to make it desirable to prepare fresh extracts or maps as aforesaid, the Collector shall cause such fresh extracts or maps to be prepared ; and shall cause a notice to be served on each proprietor declaring the extract and map which was delivered under section 50 to be cancelled, and requiring him to take out of the Collector's office the fresh extract or map which has been prepared.

CIRCULAR ORDER.

Note.—On receipt of confirmation partition paper to be engrossed on stamp paper and then submitted to the Commissioner for endorsement for formal confirmation even before the appeal to the Board is decided. (Board's circular dated 2nd January, 1897.)

94. (1) The Collector shall then proceed to give [1876, S. 123] the several proprietors possession of the separate estates allotted to them, and, if necessary, may require the assistance of the Magistrate in giving such possession ; and shall cause to be served on every recorded proprietor of a separate estate a notice—

(a) informing him that from the date specified in such notice the separate estate assigned to him, as described in the extract from the partition paper prepared and delivered or tendered to him under section 59 or section 93, as the case may be, will be deemed to be separated from the parent estate, and to be separately liable for the amount of land-revenue specified in the notice, and

(b) calling upon him to enter into a separate engagement for the payment of such land-revenue.

(2) The date specified in such notice shall be not more than three months after the proprietors have been given possession of their respective separate estates as provided in sub-section (1.)

Rulings.

- c. A sharer of an estate, the partition of which has been confirmed, is entitled to be placed in possession of the lands included in the partition, as demarcated and shown in the map and measurements and assigned to his share, but they will not be demarcated by the Collector. The proprietor of the newly-formed separate estate may himself demarcate his lands, and if any party feels himself aggrieved by the proceedings of the proprietor, his remedy lies in the Civil Court. (Board's proceedings of 3rd August 1878, No. 268, Collection 7, File 143.)
2. The Board has decided that a sharer of an estate, the partition of which has been confirmed is entitled to be placed in possession of the lands included in the partition as demarcated and shown in the map and measurement papers and assigned to his share. (Board's decision in appeal No. 301 of 1888-89.)
 - a. If an order has been passed but by an oversight it is not carried out and the partition confirmed by Commissioner the matter can be looked into at the time of delivery of possession by the Collector. (Board's No. 1039A dated 4th December, 1891.)
3. The allotment of land to one person by partition extinguishes another's right altogether; his subsequent possession is either that of a trespasser or a tenant-at-will; his dispossession is not illegal, and he has no legal right of suit for recovery of possession. *Nowab Begum vs. Rustum Khan.* 2 Agra, 149.
4. By partition a co-sharer's proprietary right to the land which has fallen in another's putti becomes extinguished, and he becomes a mere cultivator in respect to that land and liable to rent. *Zalani Rai vs. Doorga Rai*, 1 Agra, Rev. 69.
4. By partition a co-sharer's proprietary right to the land which has fallen in another's putti becomes extinguished, and he becomes a mere cultivator in respect to that land and liable to rent. *Zalim Rai vs. Doorga Rai*. [1 Agra, Rev. 69.]
5. A Butwarra does not extinguish rights of tenants, and the mere circumstance that one of the proprietors of the estate was himself the tenant does not destroy his tenant right, because another of the proprietors has had the land allotted as part of his share of the divided estate. *Nathoo Lall Chowdhury vs. Saadut Lall.* W. R., 1864, 271.
6. When an estate in which the proprietors have *sir* land is partitioned, such partition among the co-sharers is no way affected by any cultivating rights which may be possessed by cultivators not co-sharers in the estate; but it is also a well-understood effect and consequence of partition, that co-sharers retain no right of occupancy in respect of any *sir* land which may have passed under the partition into the share of other co-sharers, as a *sir*-hold proprietor has no cultivating right

distinct from and independent of his proprietary character. When, therefore, by partition he loses his proprietary title to any particular land, any cultivating right which he had in virtue of his proprietary character necessarily ceases. *Aman Singh vs. Jeygopal Singh.* 3. Agra, 164.

7. A new estate created upon a partition by the Collector comes within the meaning of "entire estate" in section 37 of Act XI of 1859. The words "time of settlement" in that section mean the time when the contract was made with Government, and in the case of a permanently-settled estate mean the time of permanent settlement. A partition by the Collector merely apportions the amount of revenue; there is no *settlement* of the revenue in any sense at the time of such partition. *Koowar Singh vs. Goursunder Pershad Singh.* I. L. R. 24 Cal., 887.
8. Partition does not create any right. It only indicates the mode of enjoyment. 1 Weekly Note, Calcutta, P. 121 (P. 128).
9. A Butwarrah is only conclusive between the share-holders themselves but not between them and other parties holding under-tenures at the time. *Woomesh Chander Mozoomder vs. Dwaraka Nath Roy.* 4 W. R. 89.

95. From the date specified in such notice, each [1876, S. 124]

Each separate estate to be borne on the revenue-roll and General Register as separately liable for the land-revenue assessed upon it.

separate estate shall be borne on the revenue-roll and General Register of the Collector as a distinct estate separately liable for the amount of land-revenue assessed upon it under this

Act, and shall be so liable whether or not the proprietor has entered into a separate engagement for the payment of the amount of land-revenue so assessed upon the estate.

96. (1). The Collector may direct the erection of such [1876, S. 125]

Boundary marks.

boundary marks as he thinks proper, to distinguish the lands of each separate estate; and the cost of such boundary marks shall be deemed to be costs of the partition.

(2) Boundary marks so erected shall be assigned to Zemindars, or to Zemindars jointly with tenure-holders, for preservation, as provided in the third clause of section 29 of the Bengal Survey Act, 1875; and, after they have been so assigned, the provisions of sections 19, 20 and 52 to 57 (both inclusive) of the said Act shall apply in the case of such boundary marks.

Ben. V. of
1875

CHAPTER XI.

MISCELLANEOUS.

- [1876, S. 139 modified] **97.** For the purposes of any enquiry under this Act, the Deputy Collector shall, in addition to the powers specifically conferred upon him by this Act, have the powers conferred by Chapters X and XIV of the Code of Civil Procedure for compelling the production of documents and enforcing the attendance of witnesses.
- XIV. of 1882

NOTE.—Sections contained in chapter X of the Code of Civil Procedure for compelling the productions of documents and Chapter XIV of the same Code for summoning and attendance of witnesses are inserted here at length for facility of reference.

CHAPTER X.

- 130.** The court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right ; and the Court may deal with such documents when produced in such manner as appears just.

- 131.** Any party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

- 132.** The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and standing which, if any, of the documents he objects to produce, and on what grounds.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

134. Except in the case of documents referred to in the plaint written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them and (c) that they are in the possession or power of the party against whom the application is made.

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection.

136. If any party fails to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered.

And the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, showing how the record is material to the suit in

which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the Indian Evidence Act, 872, would be inadmissible in the suit.

CHAPTER XIV.

159. The parties may, after the summons has been delivered

Summons to attend to give evidence or produce documents.

or sent for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this

behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

160. The party applying for a summons shall, before the sum-

Expenses of witnesses to be paid into Court on applying for summons.

mons is granted and within a period to be fixed by the Court, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the

Court in which he is required to attend, and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be

Scale of expenses.

had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

161. The sum so paid into Court shall be tendered to the

Tender of expenses to witness.

person summoned, at the time of serving the summons, if it can be served personally.

162. If it appear to the Court or to such officer as it appoints

Procedure where insufficient sum paid in.

in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on

that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

165. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

166. Every summons to a person to give evidence or produce a document shall be served as nearly may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI. as to proof of service shall apply in the case of all summonses served under this section.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall, if the certificate of the serving-officer has not been verified by the

affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the non-service :

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein ; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may, in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170 :

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment, as it thinks fit.

If witness appears, attachment may be withdrawn.

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any :

Procedure if witness fails to appear.

Provided that, if the person whose attendance is required, pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a Court may of its own accord summon as witnesses strangers to suit.

witness by a party to the suit, the court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

Duty of persons summoned to give evidence or produce document.

173. No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

When they may depart.

174. If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court.

Consequences of failure to comply with summons.

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him.

Procedure when witness apprehended cannot give evidence or produce documents.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.

Procedure when witness absconds.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—
Persons bound to attend in person.

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or where there is railway communication for five-sixths of the distance between the place where he resides and the place where the Court is situated two hundred miles distance from the Court-house.

177. If any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.
Consequence of refusal of party to give evidence when called on by Court.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable."
Rules as to witnesses to apply to parties summoned.

[1876 s. 127.]

98. The Deputy Collector, with the consent of all the parties concerned, may refer to arbitration any point arising in the course of a partition; and the provisions of sections 52, 53 and 54 shall, as far as possible, be applicable to such references.
General power to refer arbitration.

[1876 s. 128.]

99. If any proprietor of an estate held in common tenancy and brought under partition in accordance with this Act has given his share or a portion thereof in patni or other tenure or on lease, or has created any other encumbrance thereon, such tenure, lease or encumbrance shall hold good as regards the lands finally allotted to the share of such proprietor, and only as to such lands.
Saving of tenures, leases and encumbrances.

Illustrations.

I.—A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of the whole of his interest in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every raiyat on the estate; and

partition of the said estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become patnidar of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the raiyats on that estate.

II.—A, a proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy to collect one-eighth of the rent payable by every raiyat on the estate ; and

partition of the estate is made under this Act, and certain specific lands are assigned to A as his separate estate.

B will become patnidar of one-half of A's separate estate, and will hold his patni in common tenancy with the half of A's interest which A has not given in patni, so that B will be entitled to collect one-half of the rent payable by every raiyat on A's estate, and A will be entitled to collect the other half.

Note:—In this section the word "encumbrances" has been added which is not to be found in section 128 of the old Act. This has been done to accord with case law on the point.

Rulings.

1. Where A mortgaged to the plaintiff his undivided share in certain land which he held jointly with B, and subsequently to the mortgage, by a decree in a partition suit to which the plaintiff was not a party, the mortgaged property was allotted to B, other property in substitution being allotted to A:—*Held* in a suit against B and the representations of A, to recover the sum due on the mortgage by sale of the mortgaged property, that the plaintiff could not proceed against the mortgaged property which had been allotted on partition to B, but should be allowed to proceed against that which had been allotted in substitution to A, his mortgagor. *Byjenath Lall vs. Ramoodeen Choredhury* (1874) L. R. I. A. 106 ; 21 W. R. 233, followed in principle. *Hemchandra Ghose vs. Thakuroni Debi*. 1. L. R. 20 Cal. 533.
2. The plaintiffs were co-sharers to a certain estate, T being another co-sharer. In 1818 a private partition took place between the co-sharers in the course of which certain specific lands were allotted to T in severalty, the rest remaining undivided. T granted a patni lease of her share to third parties who were thenceforth in possession ; and subsequently there was a partition of the whole estate by the Collector under Bengal Act VIII of 1876, in the course of which the specific lands allotted to T in the private partition were allotted to the plaintiffs who brought against the tenants of the land suits for rent to which they made the patnidars the defts. :—

Held, that the patnidars were properly made parties to the suits in order to try the question of the right to receive the rent as between the plaintiffs and the patnidars.

Section 128 of the Bengal Act VIII of 1876 does not apply to a case in which there has been a prior private partition; the estate in such a case not being "held in common tenancy" within the meaning of that section. *Hridoy Nath Shaha vs. Mohabutanesa Bibi*, I. L. R. 20 Cal. 285.

3. Plaintiff purchased an one-third share in an undivided estate and brought a suit for partition. During the pendency of the partition suit, the defendants, the two remaining co-sharers, granted a lease of a particular plot of land, included in the undivided estate, to the present defendant. In the decree for partition, plaintiff was allotted the plot of land under a lease. Plaintiff brought a suit to recover possession of the piece of land on the ground that he was not bound by the lease.

Held,—that section 52 of the Transfer of property Act does not apply to a case where the shares of the parties and their rights to those shares are not disputed. The mode in which the lands should be allotted between the ascertained sharers does not affect the right to any specific property.

Held also, that the tenant not having been a party to the partition suit was not bound by the decree, and the plaintiff was only entitled to khas possession of the one-third share only of the plot leased out by his co-sharers. *Shaikh Khan Ali vs. Pestonji Eduljee Guydar*. Calcutta Weekly Notes, Vol. 1; 26.

4. Subsequently to a private partition by which the land in dispute was allotted to A, one of the co-sharers, a butwarrah redistributing the shares was made by the Collector. In the meantime, A had granted a mokurari to B, in respect of the land allotted to him under the private partition. *Held* that, although the co-sharers must be taken to have consented to the redistribution, yet A could not by his consent affect the right of B, his mokuraridar. *Byjenath Lall vs. Ramooddeen Chowdhury*, L. R. 1 I. A. 106; and *Sharat Chandra Burmon vs. Hurgovinda Burmon*, I. L. R. 4 Cal. 510 distinguished. *Ahmedoolah vs. Ashruff Hossein*, 8 B. L. R. Ap.; 73, note: 13, W. R.; 447 followed. *Juggessari Dyal Singh vs. Bisshessar Pershad*. 12 C. L. R. 281.

5. On partition by the Collector under the Estates' Partition Act (Bengal Act VIII of 1876) when any land of an undivided joint estate, which was incumbered by any co-sharer, is allotted

to any other co-sharer, the latter takes it free from the incumbrance so created. *Khan Ali vs. Pestonji, Eduljee, I. C. W. N.*, 62 distinguished. The cases of *Nuthoo Lall Chowdhury vs. Saadat Ball, Sp. Vol. W. R.*, 271, and *Ahmedoolah vs. Ashruff Hossein*, 13 *W. R.*, 447 have been overruled in effect by the decision of the Privy Council in the case of *Byjnath Lall vs. Ramooddeen Chowdry L. R.*, 1 *I. A.*, 106. *Joy Sankari Gupta vs. Bharat Chandra Bardhan*, 1 *L. R.*, 26 *Cal.*, 434.

100. (1) If two or more estates come into the possession of one proprietor or of the same body of proprietors, such proprietor or body of proprietors may, after being recorded as proprietors, apply to have the estates united and to hold them as a single estate. [1876, s. 129].

(2) Every such application shall be made in writing to the Collector, and the Collector shall, if he sees no objection to doing so, comply with it not less than thirty days after the publication of a notification thereof, and shall then cause the necessary entries to be made in the records of his office and report the case to the Commissioners. [1876, s. 130].

101. If any separate estate created under this Act falls into arrear so as to necessitate a sale of the land for the discharge of the arrear at any time within six years from the date of the confirmation or sanction of the partition by the Commissioner or the Board, as the case may be, [1876, s. 131].

If separate estate falls into arrear, Collector to enquire into cause and report to the Commissioner.

the Collector shall, if possible, ascertain the cause of the estate having fallen into arrear, and shall enquire whether the same is due to any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

Note.—The period of 12 years provided in sections 131 and 132 of the Act of 1876, has been reduced to six years in sections 101 and 102 of the present Act.

[1876, s. 132].

Power of Lieutenant-Governor to order a new allotment of the land-revenue.

102. If it is proved to the satisfaction of the Lieutenant-Governor at any time within six years from the date of the confirmation or sanction of a partition by the Commissioner or the Board, as the case may be, whether or not upon enquiry made under section 101, that through any fraud or error at the time of making the partition the assets of the land assigned to any separate estate were not in proportion to the amount of land-revenue for which such estate was made liable, or that the amount of land-revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate,

the Lieutenant-Governor may order a new allotment of the land-revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable.

[1876, s. 133].

Power to require proprietors of under-assessed estates to make refund to proprietors of over-assessed estates.

103. (1) Whenever the Lieutenant-Governor passes an order under section 102 for the re-allotment of the land-revenue on any separate estate, he may direct that the proprietors whose estates are found to have been under-assessed shall, for each year during which they have held possession of the separate estates, be required to pay, to the recorded proprietors of the estates which have been over-assessed, a sum equal to the annual amount in which the latter are found to have been over-assessed; and in default of payment such sum shall be recoverable as provided in section 108.

(2) No order passed by the Lieutenant-Governor under sub-section (1) shall be liable to be contested in any Court.

[1876, s. 134].

Publication of notifications.

104. Every notification required by this Act to be published shall, unless it is otherwise specially directed, be published by posting up copies of the same—

- (a) at the office of the Collector,
- (b) at the office of the Deputy Collector who is to make, is making or has made the partition,
- (c) at the village office or village offices, if any, of the proprietors of the parent estate, and
- (d) in one or more of the principal villages in the said estate.

105. (1) Any notice required by this Act to be served on any person may be served— [1876, s. 135 modified.]

- (a) by delivering the notice to the person to whom it is directed, or, on failure to effect such delivery, by posting it on some conspicuous part of the house in which the said person usually resides ; or
 - (b) by sending a registered letter, containing the notice, to such person, directed to the address, if any, which he has registered under this Act ; or
 - (c) by delivering the notice to a general agent of the person to whom it is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act ; or
 - (d) by affixing a copy of the notice at the village office of the person to whom the notice is directed ;
- or, if no such village office be found, and if the notice can not be served in any of the other modes mentioned in this section, by affixing a copy of the notice on some conspicuous place on the estate to which the notice relates,

(2) Where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, the service of a notice, in any of the modes mentioned in sub-section (1), on any one of such joint applicants shall be deemed to be good and sufficient service on both or all of them.

106. If the directions of this Act are in substance and effect complied with, no proceedings thereunder shall be affected—
Mistakes and irregularities not to vitiate proceedings.

(a) by reason of any mistake or informality unless any person has suffered, or is in danger of suffering material injury in consequence of such mistake or informality ; or

(b) by reason of the omission to publish any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required by this Act to be served.

107. If any proprietor or other person fails to comply, within the time fixed therefor by notice, with any requisition made upon him under this Act by the Collector or Deputy Collector, the Collector or Deputy Collector, as the case may be, may impose upon him such daily fine as he may think fit, not exceeding fifty rupees,
[1876, s. 137.] Fine in case of non-compliance with requisition.

and such fine shall be payable daily until the requisition is complied with ;

— and the Collector or Deputy Collector, as the case may be, may proceed from time to time to levy the amount which has become due in respect of any such fine :

Provided that, whenever the amount payable exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of the fine shall be made otherwise than by the authority of the Commissioner.

Note.—This section “must be held to apply in all Butwarra cases, (*Bourds’ No. 363 A, dated 14th August 1880.*)

108. Except as herein otherwise expressly provided, [1876, s. 138, modified.]
all fees, fines, costs and other sums

Fees, &c. to be recoverable as public demands.

ordered under this Act to be paid by any person shall be deemed to be public demands, and shall be recoverable under the Public Demands Recovery Act, 1895.

Ben. 1 of 1895.

109. All or any powers and functions which are [1876, s. 140, modified.]
assigned by this Act to a Deputy Collector may be exercised and discharged by the Collector ;

Powers and functions of Deputy Collector may be exercised by Collector.

and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, then if such Act has been done, or such order has been made, by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

110. (1) The Lieutenant-Governor may vest any [1876, s. 141.]
Collector or Deputy Collector with all

Power to vest Collector or Deputy Collector with settlement powers.

or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of a parent estate.

(2) Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

111. (1) An appeal, if presented within one [1876, s. 142, modified.]
month from the date of the order appealed against, shall lie to the Collector

Appeals to the Collector, and admission by him of objections.

against every order of a Deputy Collector—

- (a) directing, under section 39, by whom or how the costs of an enquiry held in consequence of an objection raised shall be paid ;
- (b) made under section 47, sub-section (3), declaring what entry in a record of existing rents and other assets of land shall be accepted for the purposes of the partition ;
- (c) made under section 50, adopting a record of existing rents and other assets of land ;
- (d) refusing, under section 51, to allow recorded proprietors to make a partition privately among themselves or by arbitration ;
- (e) rejecting, under section 76, sub-section (3), an application for partition according to separate possession ;
- (f) directing, under section 81, sub-section (3), that a tenure or holding be split up, and that the rent thereof be apportioned ; or
- (g) imposing a fine under section 107.

(2). Objections to any other orders passed by the Deputy Collector shall only be admitted by the Collector if made when he proceeds to consider a partition under section 58.

NOTE 1.—By Sections 111 and 112 of this Act, appeals to the Collector and Commissioner in matters of limits of land and the rent to be paid for it in perpetuity fixed under S. 89 of the old law (which corresponds to section 64 of the present Act) have been altogether withheld. The rights of appeals in connection with rent-free lands and permanent intermediate tenures mentioned in Ss. 110 and 111 of the previous Act corresponding to Ss. 82 and 83 of the present Act have also been curtailed. But provisions have been made in this Act that objections to orders other than those specified in Sections 111 and 112 may be made to the Collector when he proceeds to consider a partition under S. 58 and to the Commissioner when he proceeds under Section 90 or Section 91.

NOTE 2.—The Collector has no power to review a case struck off by his predecessor. *Board's decision in appeal No. 180 of 1894, dated 11th July 1895.*

112. (1) An appeal, if presented to the Commissioner, or to the Collector for transmission to the Commissioner, within one month from the date of the order appealed against, shall lie to the Commissioner against every order of a Collector (whether such order be passed by the Collector in the first instance or in appeal from the order of a Deputy Collector)—

[1876, s. 143, modified.]

Appeals to the Commissioner and admission by him of objections.

- (a) rejecting an application for the partition of an estate, or for the separation of a share, or putting an end to proceedings for effecting a partition or separation after the application has been admitted ;
- (b) directing, under section 29, that an application for partition or separation be admitted ;
- (c) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition ;
- (d) made under section 50, adopting a record of existing rents and other assets of land ;
- (e) refusing, under section 55, to approve a partition made by proprietors or by an arbitrator or arbitrators ;
- (f) refusing to allow a partition to be made under section 76 in accordance with separate possession ;
- (g) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition ;
- (h) confirming, amending or rejecting, under section 86, an allotment made under section 84 ;
- (i) made under section 88, when a dispute or doubt exists as to whether any land forms part of a parent estate.

(j) imposing or confirming the imposition of a fine under section 10^f; or

(k) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

(2). Objections to any other orders passed by the Collector shall only be admitted by the Commissioner if made when he proceeds to consider a partition under section 90 or section 91.

[1876, s. 14
modified.]

113. An appeal, if presented to the Board, or to Appeals to the the Commissioner for transmission to Board. the Board, within six weeks from the date of the order appealed against, shall lie to the Board against every order of the Commissioner—

(a) confirming, modifying or reversing any order of the Collector rejecting an application for the partition of an estate, or putting an end to proceedings for effecting a partition after the application has been admitted ;

(b) confirming, modifying or reversing any order of the Collector directing, under section 29, that an application for partition be admitted ;

(c) confirming or amending a partition as approved or made by the Collector ; or

(d) imposing, or confirming the imposition of, any fine amounting to five hundred rupees, or ordering or confirming an order directing, the payment of any costs amounting to more than five hundred rupees.

Rulings.

- There is no appeal, as of right, to the Board from an order of the Commissioner against an order of the Collector under Section 116 (S. 88 of the present Act) of the Act of 1876 as to disputes or doubts regarding land. (*Board's proceedings of 30th July, 1887, No. 82, Collection 7, file 251.*)

114. (1) Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner, no further appeal shall lie ; but the Board, acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit.

Limitation of appeals ; revision by Board ; further appeal to Board.

[1876, s. 145, modified.]

(2) When an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is modified or reversed by the Commissioner, a further appeal shall lie to the Board in the following cases only, namely, when the order of the Collector was one—

- (a) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition, when the excess which he is ordered to pay exceeds five hundred rupees ;
- (b) made under section 50, adopting a record of existing rents and other assets of land ;
- (c) directing under section 35, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition ; or
- (d) confirming, amending or rejecting, under section 86, an allotment made under section 84.

Rulings.

1. A dispute as to the rent of one small plot of land was not considered as bringing the case within clause (b) of this section. *Prima facie* there were no special ground shown for any interference by the Board under this section. (*Board's Proceedings of 8th May, 1886, No. 5, Collection 7, file 189.*)
2. A Commissioner without going into the merits of a case decided on appeal a preliminary objection, and against his

order an appeal was preferred to the Board. It was held that, apart from the fact that the parties agreed to the Board's entering into the merits of the case, this section fully authorized the Board to do so, when dealing with the appeal regarding the preliminary objection. (*Board's Proceedings of 20th February, 1886, No. 97, Collection 2, File 630.*)

[New.]

115. When an appeal is presented under section 111, section 112 or section 113, or when the Board calls, under section 114, subsection (1), for the record of a case, the proceedings shall not be stayed pending the appeal or revision unless the appellate or revising authority so directs.

[1876, s. 146, modified.]

116. (1) Any proceedings of a Deputy Collector, Collector or Commissioner connected with giving possession to the proprietors of their respective separate estates in pursuance of section 94 may be set aside or amended by the Collector, Commissioner or Board, as the case may be, provided that the revising authority shall, within three months from the date on which such possession has been given, make an order to the effect that such proceedings are under its consideration.

(2) Every such order shall, when made by the Commissioner or the Board, be communicated to the Collector of the district, and the Collector shall cause all such orders to be published by notification.

Ruling.

1. At the time of giving possession, the Amin proceeded to divide the trees standing on the estate among the several proprietors, whereupon an objection was raised by certain sharers to the effect that the trees standing on their plot should be left entirely in their sole possession, as they should go with the lands on which they stood. The Deputy Collector held that the value of the trees had not been included in the assets of the land according to the practice there in vogue, and that they should therefore be separately divided among the parties. The Collector confirmed this order, dismissing the appeal. Against the above orders an appeal was preferred to the Commissioner, who decreed it on the ground that it would be impossible to put one proprietor in possession of a certain plot

of land, and to put other proprietors in possession of different trees which were growing upon that plot of land. On appeal this view was upheld by the Board as in accordance with fairness and common sense. (*Board's Proceedings of 27th March, 1886, No. 46, Collection 7, File 1485.*)

117. The Collector, the Commissioner and the [1876, s. 147.]

Orders as to costs
on appeal.

Board respectively may pass such orders as they think fit in respect of the payment of the costs of any appeal which is made to them respectively under this Act.

Note.—By this section Collector has also been empowered to award costs in appeal which is new.

Ruling.

1. A pleader, who was engaged in a partition case, having taken 20 years' purchase as the valuation of his claim for his fee, the question how the valuation should be made in partition cases in Revenue offices was referred to the Board, who pointed out that in partition proceedings before Revenue officers in calculating such fees the rules prescribed by the Board under the Legal Practitioners' Act XVIII of 1879 should be observed. (*Board's proceedings of 19th May, 1883, No. 23, Collection 7, File 221.*)

118. If, in any case in which a Collector or other [1876, s. 148.]

Powers of officers
exercising jurisdiction
under this Act with
regard to false evi-
dence or forgery.

officer exercises jurisdiction under this Act, any person is guilty of the offence of giving or fabricating false evidence, or of forgery, as defined in the Indian Penal Code, or of abetting any of those offences, such Collector XLV of 1860. or other officer shall have the same powers in respect of such offence, and of the person charged with committing the same, as are vested by the Code of Criminal Procedure, 1882, in a Civil Court when any such offence is X of 1882. committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceedings in such Court.

119. No order—

[1876 s. 149.]

(a) refusing to admit an application for partition, or to carry out a partition, on any of the grounds mentioned in section 11; or

Certain orders under this Act not liable to be contested or set aside by civil suit.

- (b) made under section 20, section 30, Chapter V, Chapter VII, Chapter VIII, Chapter IX (except section 81), Chapter X, section 107 or section 117, shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act :

Provided that—

- (i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 84 or section 86 ; or
- (ii) any person who is aggrieved by an order made under section 88, may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

Rulings.

1. A suit for possession of lands of which the owners have been dispossessed in pursuance of an order of the Collector under section 116 (corresponding to section 88 of the present Estates Partition Act) will lie, even though no suit is brought to set aside the Collector's order under section 150 (corresponding to section 119 of this Act). *Laloo Singh vs. Purna Chandra Banerjee*. I. L. R. 24 Cal. 149.
2. To a partition effected by the revenue authorities under Regulation XIX of 1814, the plaintiff presented a petition of objection, in which he alleged that his share had been included in, and declared to be part and parcel of, the defendant's share. In a suit for a declaration of his right to the share claimed by him, and for confirmation of possession thereof, both the Lower Courts gave a decree for the plaintiff. On special appeal an objection was taken that this suit would not lie, no application having been made in it for the annulment of the partition proceedings by which the property sued for was included in the plaintiff's share. *Held*, that the suit would lie ; that there was no necessity for the plaintiff, who claimed to be in possession of his proper share, and sued only for a declaration of his title thereto, to include in his plaint an application for the renewal of the partition proceedings : and that those proceedings were final. *Indrabati Kunwuri vs. Mahadeo Chowdhry*. I. B. L. R. S. N. 6.

3. It had been ruled under Reg : XIX of 1814, that there is nothing in the Butwarra law to prevent the Civil Court from entertaining a suit for the declaration of the plaintiff's right to a larger share than that recorded in his name in the paper of partition. 6 B. L. R. 658 ; 8 B. L. R. 72 ; Appendix.
4. The plaintiffs and defendants were owners of an undivided estate. Besides their shares as part owners, the plaintiffs held some of the estate as tenants and some as purchasers from some of their co-sharers in the estate. The whole estate was partitioned under Reg : XIX of 1814 (now repealed), and on such partition the lands which the plaintiffs held as tenants and as purchasers were allotted to co-sharers other than those under whom the plaintiffs held or from whom they purchased. In a suit by the plaintiffs for declaration of their title to those lands, and for a redistribution of the shares.—Held, the Court had no jurisdiction to entertain a suit to alter a partition effected by the Revenue authorities. Held also, in accordance with the principles laid down by the Privy Council in *Byjnath Lall vs. Ramudin Chowdhry* (21 W. R. 233), viz., that one co-sharer in a joint and undivided estate cannot deal with his share so as to affect the other co-sharers, but his assignee takes subject to their rights ; that the plaintiffs were not entitled to the relief they sought for, and their suit must be dismissed. *Sharat Chunder Burmon vs. Hargovinda Burmon*. I. L. R. 4 Cal. ; 510.

120. In the execution of the duties imposed on the Board by this Act, the Board shall be guided by such orders or instructions as they may from time to time receive from the Lieutenant-Governor. [1876, s. 151.]

Board to be guided by orders or instructions of Lieutenant-Governor.

121. The Board may, from time to time, with the previous sanction of the Lieutenant-Governor, make rules,— [1876, s. 152 modified.]

Power of Board to make rules.

- (a) prescribing, in pursuance of section 18, clause (g), particulars to be contained in applications for partition ;
- (b) for regulating the appointment of persons under section 35 and the scale of their remuneration, and for enabling an officer making a partition to keep himself informed of the proceedings of such persons and to exercise a proper control over them ;

- (c) for determining the costs of partitions ;
- (d) for fixing, for the purposes of section 37, the instalments in which and the times at which the cost of making partitions shall be levied from proprietors ;
- (e) for fixing a general scale of fees for the levy of charges from proprietors of estates under partition, when the formation of an Estates Partition Fund has been directed under section 42 ;
- (f) for fixing the instalments in which and the times at which the said fees shall be levied from proprietors ;
- (g) generally, for regulating the receipts, disbursements and management of any Estates Partition Fund formed under the said section 42 ;
- (h) prescribing what entries in the record of existing rents and other assets shall be read out and, when necessary, corrected or added to, under section 47, sub-section (2) ;
- (i) prescribing the manner in which and the period for which copies of survey papers and records of existing rents and other assets shall be published under section 48 ;
- (j) prescribing the entries in survey papers or records of existing rents and other assets of which copies shall be furnished to landlords and tenants under the said section 48 ;
- (k) prescribing the form of partition papers to be delivered under section 53 or prepared under section 57 ; and
- (l) generally, for the guidance of officers in conducting partitions or making a survey and preparing a record of existing rents and other assets of land under this Act.

PARTITION RULES.

Rules made by the Board of Revenue, with the previous sanction of Government, under section 121 of the Estates Partition Act, V. (B. C.) of 1897, together with the instructions relating to them.*

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Rule 1.—In addition to the particulars required to be entered in the application under section 18, the Collector shall require the applicant to furnish, as far as possible, the names and addresses of the proprietors of the estate or estates surrounding the estate which is to be partitioned, the name of the post-office of the area within which each of the said proprietors resides, and the name and number of the estates owned by them.

Particulars to be entered in the application under section 18.

Sec. 121 (a).

Rule 2.—The costs of partition may include the following charges :—

Costs of partition.

- (1) The cost† of establishments appointed under section 35 of the Act. Sec. 121 (c).
- (2) The cost† of establishments in the District or Commissioner's office under section 36.
- (3) The salary and pension and leave allowance and travelling allowances of the Deputy Collector appointed under section 41.
- (4) Contingent expenditure, including—
 - (a) the cost of service of notices and of the publication of notifications under the Act ;
 - (b) the costs of stationery and forms and survey instruments ;

* Published in the Government of Bengal's Notification No. 1899 L. R., dated the 2nd of May 1899.

† N. B.—Includes pay, travelling allowance, and contributions, if any, to pension and leave.

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- (c) the cost of making any copies of the records and maps that may be required under this Act for the purposes of the partition;
- (d) any other charges necessary for the completion of the partition.
- (5) Cost of audit of accounts.
- (6) Cost of boundary marks under section 96.

INSTRUCTIONS UNDER RULES 1 & 2.

PREPARATION OF ESTIMATES AND KEEPING ACCOUNTS.

1. Estimates under section 37 shall be prepared in Form (1) given in Appendix B, and shall be submitted to the Commissioner for sanction.

Preparation and sanction of partition estimate.

2. In estimating the probable cost of the measuring establishment required, careful consideration should be given not only to the size of the estate, but also to its compactness or the reverse, the number of separate shares to be formed, and similar circumstances. It should be borne in mind that in cases where no superior officers are employed for testing the work of amins and similar duties, and where there is no district establishment under section 36, it may be necessary to retain the services of the amin, not only for measurement, but until the proceedings of the partition are completed by the Collector.

Preparation of estimates.

3. Under the head of other expenditure, provision should be made for the items of expenditure described under this head in rule 2 of the rules framed under section 121.

Contingent expenses.

4. In framing the estimate of the cost of partition, the yearly cost in any district of an establishment employed under section 36 and of any Deputy Collector employed under section 41 shall be distributed among all estates in the said district which have been declared to be under partition, under section 29 in proportion to their area under partition subject to the provisions of section 38. Similarly, the yearly cost of an establishment employed under section 36 in the office of any Commissioner will be distributed among the estates in his Division which have been declared to be under partition under section 29 in proportion to their area under partition. In exceptional cases in which the area of the estates declared to be under partition is not known, even approximately, the distribution of the cost of the establishments mentioned in this rule shall be in proportion to their most recent valuations for the purposes of the assessment of Road and Public Works cess.

Apportionment of cost of certain establishments.

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(a) The cost of inspecting and other superior officer employed by the Deputy Collector under section 35 may be distributed among the several estates for whose benefit they are employed in proportion to the area of each which has been declared to be under partition under section 29.

Proportional debit of certain costs to estates.

Provided that in exceptional cases in which the area of the estates declared to be under partition is not known, even approximately, the distribution of such costs shall be in proportion to their most recent valuation for the purpose of the assessment of Road and Public Works cess. The cost of audit of the partition accounts, where leviable, will be distributed among the estates concerned on the same principle.

(b) In all districts in which an Estates Partition Fund has not been formed under section 42 (1), the costs of partition shall be borne by all estates which have been declared to be under partition under section 29 in accordance with the estimate for each to be framed under the provisions of section 37, subject to the terms of section 38, and to final adjustment under section 40.

5. At the commencement of each year the Collector shall prepare a list of all estates which have been declared to be under partition in his district, showing the area of each under partition (or in the exceptional cases referred to in instruction No. 4, their most recent valuations for the purpose of the assessment of Road and Public Works cess), and shall distribute the annual cost of any establishment employed in his office under section 36, of any Deputy Collector employed under section 41, of any inspecting and other superior officers employed by the Deputy Collector under section 35, and of the audit of the partition accounts where leviable in proportion to the area of each estate under partition (or in the exceptional cases referred to in proportion to the most recent valuations of each for the purposes of the assessment of Road and Public Works cess). Provided that should it appear probable that the operations in any estate will conclude early in the year, it will be in the discretion of the Collector to remit the annual share of such cost debitable to such estate as above, which shall thereupon be apportioned among the remaining estates under partition.

6. At the commencement of each year the Collector shall submit to the Commissioner, in duplicate, a list of all estates under partition in his district, with the area of each under partition (or in the exceptional cases referred to in instruction No. 4, their most recent valuations for the purpose of the assessment of Road and Public Works cess), and the Commissioner shall then determine the amount to be borne by each estate on account of the establishment employed in his office under section 36, and enter the same in the several district lists, returning one copy of each to the Collector by whom it was submitted.

7. Any special proceedings as to costs under sections 38 and 39 should be reported to the Commissioner of the Division, and should be specially mentioned in the final report of the partition.

Special proceedings as to costs.

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Sec. 121 (d).

Rule 3.—The estimated cost of a partition under section 37 (1) shall be paid in not less than three instalments, of which the first shall consist of one-half of the total amount estimated.

The first instalment shall be leviable by the Collector as soon as the estimate made by him under section 37 (1) has been sanctioned by the Commissioner, and the remaining instalments at such times as the Collector may think fit, provided the entire cost of a partition shall be realised before it is confirmed. Every instalment shall be paid within one month from the date on which a demand for it shall have been served upon the person or the accredited agent of the person from whom it is due, and, in the event of non-payment within one month from such date, the Collector shall proceed to levy the amount under the Public Demands Recovery Act, 1895.

Sec. 121 (e).

Rule 4.—The following shall be the maximum scale of General scale of fees. fees to be levied under section 42 (3):—

	per acre
	Rs. A.
For an estate of 100 acres or less	... 1 0
For an estate exceeding 100 acres but less than 200 acres	... 0 14
For an estate exceeding 200 acres but less than 300 acres	... 0 12
For an estate exceeding 300 acres but less than 500 acres	... 0 10
For an estate exceeding 500 acres	... 0 8

and a fee of Re. 1 per day to the amin for every day he is engaged subsequently on local enquiries and reports.

If the Collector should consider in any case that a higher scale is required, he shall report the exceptional circumstances to the Commissioner for sanction. If the excess is more than 25 per cent. of the ordinary scale, or amounts to more than Rs. 1,000, in all, the Commissioner will report the case for the orders of the Board.

Sec. 121 (f).

Rule 5.—The fees leviable from the proprietors under section 42 (5) shall be paid in not less than three instalments, of which the first shall consist of one-half of the total amount estimated. The first instalment shall be leviable by the Collector as soon as the estimate made by him under section 37 (1) has been sanctioned by the Commissioner, and the

remaining instalments at such times as the Collector may think fit, provided the entire cost of a partition shall be realised before it is confirmed. Every instalment shall be paid within one month from the date on which a demand for it shall have been served upon the person or the accredited agent of the person from whom it is due, and, in the event of non-payment within one month from such date, the Collector shall proceed to levy the amount under the Public Demands Recovery Act, 1895.

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Rule 6.—The entries in the record of existing rents and other assets which are to be read out under Sec. 121 (h).

Entries to be read
out during attestation.

section 47, sub-section (2), shall be—

- (1) the name of the proprietor, landlord and tenant of each holding ;
- (2) the area of the holding and the number of fields contained in it ;
- (3) the rent payable for the holding (a) as stated by the landlord, (b) as stated by the tenant, and (c) as taken by the Deputy Collector for the purpose of the partition.

In the case of land not contained in any holding the following entries shall be read out :—

- (a) in the case of cultivated or occupied land, the area and boundaries (if any) of the land and the name of the occupant ;
- (b) in the case of uncultivated or unoccupied land, the area and boundaries (if any) of the land and a brief description of it, as roads, burial-ground, &c. ;
- (c) the assets, if any, recorded under section 46 (d).

Rule 7.—Under section 48 the copy of the record of existing rents shall be locally published in the Sec. 121 (i)

Mode of publica-
tion of the record.

following manner :—

- (a) A notice shall be posted up at the landlord's office in the estate or village, or in the presence of not less than two persons in some conspicuous place in the village, stating that the record will be published in the village, on a day to be specified, not less than a week from the date of such notice, and calling on all persons interested to attend on the date so specified.

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- (b) On the date fixed for publication, the entries in the record as prescribed by the preceding rule shall be read out in the presence of the parties who attend, and they shall be informed that the record will be open for inspection for not less than one month in the office of the Collector or Deputy Collector, or in such other convenient place as such officer may determine.

Sec. 121 (j).

Rule 8.—Under section 48 a copy of the following entries in the record of existing rents shall be furnished to each landlord and tenant, so far as such entries affect his estate, tenure or holding:—

Copies to be furnished.

A. In the case of rent-paying lands—

- (i) the name of the village and pargana and tauzi number of the estate ;
- (ii) the names of the proprietors ;
- (iii) the name of the landlord, if different from the proprietor ;
- (iv) the name of the occupant of the land or holding ;
- (v) the number of each field as given in the map ;
- (vi) the boundaries as recorded in the record ;
- (vii) the area of each field ;
- (viii) the total area of the holding ;
- (ix) the rent—
 - (a) as stated by the landlord ;
 - (b) as stated by the tenant ;
 - (c) recorded by the Deputy Collector.

B. In the case of other lands —

- (a) if occupied, the same information as above, heads (i)—(viii) ;
- (b) if unoccupied, the same information as above, heads (i), (ii), (v), (vi), (vii) and (viii) ;
- (c) a list of assets, if any, recorded under section 46(d).

INSTRUCTIONS UNDER RULES 6, 7 AND 8.

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1. Under section 47 of the Act, the Board prescribe that the notification to be issued shall be in Form 2, Appendix B. It shall allow an interval of not less than one week to elapse between its publication and the date of attestation. No place shall be fixed for attestation which is at a distance of more than three miles from the village the records of which are to be attested.

2. Under the preceding instruction a period of not less than a week is to be allowed between the issue of the notice and the date of attestation, but ordinarily, unless the progress of the work will be hampered by the delay, an interval of one month should be allowed.

3. If there is reason to believe that the landlords or tenants will absent themselves from the attestation proceedings, steps should be taken to enforce their attendance by the issue of special notices under the powers given by section 97 of the Act. The notice may be issued in Form 3, Appendix B.

4. The attestation proceedings must be commenced on the day fixed, and if, for any reason, it is impossible to do so, the Deputy Collector must issue a fresh notification or attend at the place fixed, and record a formal order adjourning the proceedings to another date. In such cases a notice should be sent to the village as soon as it is found necessary to adjourn the date. All orders of adjournment, with the reasons, are to be entered on the order-sheet.

5. The general notification is sufficient notice to all persons, and if all do not come, a Deputy Collector is entitled to proceed in the presence of such persons as do attend. It is undesirable that he should proceed in the absence of any considerable number of tenants, and if they do not attend, the Deputy Collector should take action under section 97 of the Act. A good effect may be produced if the practice be observed of summoning those who do not attend, and of causing them to pay a process-fee for the service of the summons.

6. If a tenant does not attend in person, but the accuracy of the entries, in his khatian can be sufficiently attested by his relations or neighbours, it is not necessary to cause his attendance. The Deputy Collector must, however, satisfy himself that the entries made in a tenant's khatian slip are publicly certified, so that he may be made aware of them. The signatures of parties are not necessary, but are useful as a check.

7. A Deputy Collector when proceeding to attestation may be accompanied by a staff of attestation muharrirs. The establishment will vary with the nature of the work, but should be large enough to provide for sufficient number of khatian slips which have undergone preliminary attestation being laid before the Deputy Collector each day for final attestation, and also to provide for the complete carrying out of the orders passed during attestation and the preparation of the records for draft publication.

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Procedure of attestation

8. Attestation is divided into two stages :—

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- (1) preliminary explanation when the muharrirs read out and explain the entries in the khatian, noting errors or disputes and entering the rents as stated by the landlords and tenants and other facts not entered by the amin ; and
- (2) attestation by the Deputy Collector when errors are corrected, disputes disposed of, and the entries in the khatian completed.

At the preliminary explanation the attestation muharrirs shall enter all necessary details in the khatians.

9. Where any particular is disputed, the column of the khatian will be left blank, and the disputes will be entered in a dispute list, as provided in instruction No. 29 under rules 10 to 19 below. The attestation muharrir will also prepare a list of mistakes to be corrected.

10. When the attestation muharrir has, in consultation with the landlords or their agents, and with the tenants, made all the necessary entries in the khatian and the dispute list, and has explained them to the parties, the papers shall be laid before the Deputy Collector for final attestation. Arrangements should be made that parties are not kept waiting, and, as far as possible, the preliminary explanation and final attestation should take place on the same day.

11. At the time of final attestation, the Deputy Collector should take his seat at a table in as open a place as possible ; it is convenient to have a small enclosure made with bamboos, so as to keep off the pressure of the crowd, while enabling all to see and hear, and with an entrance by which each tenant can be admitted to the front of the table as his name is called. The tenants will then be called up in order before the Deputy Collector.

12. The entries prescribed in rule 6 of the rules issued under section 121 shall be read out and attested ; and any objections, oral or written, made to such entries shall be summarily disposed of. The Deputy Collector should satisfy himself that the tenant understands and agrees to what is entered concerning his lands, rental, and other details of his tenancy. At the same time, the mistake list is to be reviewed, and orders will be passed on any matters which have not been disposed of.

13. As the final attestation of each khatian is completed, it should be initialled and dated by the Deputy Collector. All corrections made in the khatians should be initialled by the Deputy Collector.

14. All orders passed by the Deputy Collector at this stage are to be entered in the dispute list or mistake list, and to be initialled by him. He should see that they are given effect to in the records, and when this has been done, a certificate to that effect will be made on each list. Orders passed on rent disputes need not be treated in this way, as the Deputy Collector will at once give effect to his order by filling up the appropriate column in the khatian.

15. All inquiries into disputes which may arise in the course of survey or the preparation of a record of existing rents are, under section 47 (3), to be decided summarily, and the Deputy Collector is to declare what entry is accepted for the purposes of partition. Officers engaged in making partitions should not enter into claims of right or title, unless it is necessary to do so for the disposal of the disputes. They should, as far as possible, decide disputes according to existing facts and present possession.

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16. Under section 97 of the Act they are vested with powers under Chapters X and XIV of the Code of Civil Procedure for compelling the production of documents and enforcing the attendance of witnesses, and not for the trial of cases.

17. If the statements of the landlords and tenants as to the existing rents do not agree, the Deputy Collector is to summarily ascertain the existing rental by examining the landlord's accounts, raiyats' rent-receipts, the road cess papers or otherwise.

18. A practice has been established in some districts of calling upon the proprietors to supply a raibandha or table of rates, and of assessing the land surveyed according to it, without inquiring whether the rent resulting is that which is at the time payable or not. This is not in accordance with the system prescribed by section 46(c) of the Act, the provisions of which should be observed with care.

19. When all necessary entries have been made in the khatian, all mistakes have been corrected, and all disputes have been disposed of, the Deputy Collector shall cause the record to be prepared for publication under section 48 of the Act.

20. It is desirable that publication of the record should follow, as soon as possible, after the attestation, while the people still remember what was entered in the khatian. For this object the Deputy Collector, if he is unable to publish it personally, should have an establishment for the purpose, and should, if there are several villages in the estate, arrange for the systematic publication of the records.

21. It is advisable, if possible, to have the records published by a kanungo or an officer of equal standing.

22. The duplicate of the notice for publication should be attested by the peon, and the officer deputed to make publication, when he visits the village, will enquire into and verify the manner of publication. If he finds that the notice was not duly published, that the occupants of lands in the village are not prepared to hear the entries read out, he will report the fact to the Deputy Collector, so that steps may be taken to fix an adjourned date, if necessary.

23. In villages containing no dwellings, or of which the greater portion of the occupants of the village lands live elsewhere, the peon who serves the notice will be supplied with subsidiary notices to be served in the villages where the majority of the landlords or tenants live. Arrangements may be made to summon the people; and the services of the village chaukidar or other village officials should be used for this purpose.

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Report of publication. 24. A report carefully attested by the officer who carries out the publication will be filed with the proceedings, and the returns of notices will similarly be filed.

25. The record will ordinarily be kept for inspection in the Office of Deputy Collector, or a special room in a convenient building may be fixed elsewhere, due regard being had to the safety of the record. In all cases some special place should be set apart where the records of which publication has been made can be arranged in due order of dates in charge of a record-keeper or trustworthy muharir. A list will be kept by him showing on what date each record was published and when the legal period for inspection will expire.

26. Arrangements should be made to meet the convenience of parties who wish to inspect the records and to allow them to copy portions of the records, subject to the careful supervision of the officer in charge.

27. Verbal objections may be made at any time up to the publication of the record, but written petitions of objection to any entry in the record are to be stamped as required under the Court-fees Act. They are to be entered in a register showing briefly the subject-matter of such petition.

28. When the legal period for inspection of the records has expired, the Deputy Collector will again examine the khasra, khatian and the village map, if necessary, to see that they are duly corrected, and will proceed under section 50 of the Act. In the case of corrections which are ordered on objections, a reference may be made in the khatian to the date of the order for such correction. All alterations in the records are to be initialled by a responsible officer.

Sec. 121 (k).

Rule 9.—The partition paper required under sections 53 and 57 shall be prepared in the form annexed. (Appendix A).

INSTRUCTIONS UNDER RULE 9.

1. The sum necessary for the purchase of stamped paper on which to execute the partition deed shall be leviable as soon as the notice under section 93 has been published by the Collector. The cost of stamp to be affixed to the partition paper, which is leviable under the Stamp Act, I of 1879, Schedule 1-27, shall not form part of the costs of partition as contemplated in sections 37 and 38, but shall be levied from the different proprietors of the shares created by the partition in proportion to the value of their shares.

Stamp duty.

2. A register of stamp duties levied on partition deeds shall be kept up in Form 4, Appendix B.

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Sec. 121 (7).

Rule 10.—The following processes will ordinarily be comprised in the making of a survey and preparation of a record of rents and other assets of land under the Act :—

Procedure for survey and preparation of the record.

- (i) Demarcation of the boundaries of the estate.
- (ii) Measurement of lands.
- (iii) Khanapuri or preliminary preparation of the record.
- (iv) Attestation of the record and disposal of objections.
- (v) Publication of the Record.

Rule 11.—If the estate under partition exceeds the area of a village according to the revenue survey, the unit of survey and record shall be the area contained within the extreme boundaries of the village maps of the Revenue survey, so far as such area can be determined by the Deputy Collector. Sec. 121 (7).

Unit of survey.

Identification of village according to possession should be followed. Where a dispute exists, the boundaries claimed by either party shall be surveyed, and the dispute shall be disposed of by the Deputy Collector.

Rule 12.—Where there is no dispute, the boundaries of the village according to possession should be followed. Where a dispute exists, the boundaries claimed by either party shall be surveyed, and the dispute shall be disposed of by the Deputy Collector. Sec. 121 (7).

Identification of lands.

Rule 13.—A field map of every village shall be prepared. It shall show the boundaries of every field separately assessed to rent, or of such plot of land as the instructions of the Board of Revenue for giving effect to these rules may prescribe. Sec. 121 (7).

Preparation of map.

Rule 14.—For the purpose of preparing the record of existing rents and other assets of land, the following documents shall be prepared :— Sec. 121 (7).

Papers to be prepared for the record.

- (i) The village map.
- (ii) The khasra or field index.
- (iii) The khatfan or record of existing rents and other assets of land.
- (iv) The khewat or record of the character and extent of proprietary interests.
- (v) Any other papers which the Board may from time to time prescribe.

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Rule 15.—The record to be prepared under section 46 of the Act shall consist of a khewat and a khatian.

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Form of record.

Sec. 121 (f).

Sec. 121 (f).

Rule 16.—The khewat shall show the character and extent of proprietary interests; and where there are large tenure-holders, the character and extent

Khewat.

of whose interest may, in the opinion of the Deputy Collector, require it, such interest shall be recorded in a similar form in addition to being recorded in the khatian.

Sec. 121 (f)

Rule 17.—The khewat of proprietary interests shall be drawn up in accordance with the proprietary interests, as ascertained in accordance with the procedure prescribed in Chapter IV of the Act.

Manner of preparing the khewat.

Sec. 121 (f).

Rule 18.—The khatian shall show in detail for all the lands of the estate or village the lands included in such estate or village according to occupation

Form of khatian.

by landlord or tenant, with particulars of rent and other assets, if any.

Sec. 121 (f)

Rule 19. Lands cultivated or held direct by the proprietor shall be shown in detail in the khatian. Lands unoccupied, as roads and rivers, shall also be entered.

INSTRUCTIONS UNDER RULES 16 TO 19.

1. The rules of the Survey and Settlement Manual shall be followed so far as they apply in making a survey and preparing a record under Chapter VI of the Act. The following instructions are taken from those rules, and comprise the most important points of procedure :—

A.—Demarcation of Boundaries.

2. Before the commencement of survey a general notice in Form 5, Appendix B, to be served in accordance with the provisions of section 5 of the Bengal Survey Act, V (B. C.) of 1875, shall be issued to the proprietors or their agents and all occupants of the lands under partition.

General notice.

3. If these general notices are not obeyed, a special notice in Form 6, Appendix B, to be served in accordance with the provisions of section 48 of the Survey Act, shall issue under section 7 of the Survey Act on individuals by name, and if the parties still refuse to attend, fines can be inflicted under section 51 of that Act.

Special notice.

4. The demarcation of boundaries and identification of lands is to be carried out with all publicity, and the voluntary co-operation of owners and occupants of lands is to be sought.

Demarcation.

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5. At least ten days before proceeding to demarcate the village the Deputy Collector will issue a general notice in Form 7, Appendix B, to the proprietors (or their agents) of neighbouring villages to inform them when the demarcation is to take place and to enable them to attend. Similar notices shall be served upon the proprietors of the estates under partition.

Notice on neighbouring villages.

6. When there is no dispute, the boundaries according to possession will be demarcated by placing marks at convenient places on the boundary line. If there is any dispute, both lines of boundary will be demarcated, and will be shown on the map for decision by the Deputy Collector under section 88 of the Estates Partition Act, V (B. C.) of 1897.

Disputes as to boundary.

B.—Measurement.

7. Measurement includes survey of the boundary or traverse survey and field-to-field survey.

A.—Traverse Survey of Boundaries.

Note.—The work of boundary or traverse survey is mainly technical. Its object is to prepare skeleton maps of villages for the purpose of field survey. Proprietors and occupants of lands should be informed that the traverse survey does not necessarily indicate the boundary, which will be accurately surveyed at the time of cadastral survey. The surveyor is to prepare a note showing any special circumstances which may arise during survey requiring orders.

8. The amin deputed to carry out the traverse survey of boundaries is to follow as closely as possible the real boundaries of villages which have been demarcated.

General rules.

Preparation of skeleton ap.

9. He is to mark stations on the real boundaries, and to connect these stations by straight lines, which will then form the outline skeleton map of the village.

10. All large village sites are to have sub-traverse lines, running round and through them. Tracts of jheel and jungle should be similarly encircled by sub-traverse lines. All large rivers require stations on both banks.

Traverse survey of village sites.

11. In all large villages inquiries are to be made as to the boundaries of tolas or other subdivisions of the village. These, if they form compact areas, are to be demarcated, and the boundaries traversed for the convenience of the cadastral survey and record-writing.

Subdivision of villages.

12. Traverse survey of boundaries may be made either by the prismatic compass or the plane table. The scale of survey should be ordinarily 16 inches to the mile. Paper for sheets should be used divided into squares on the 16-inch to a mile scale containing $2\frac{1}{2}$ acres to the square inch.

Method of survey.

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13. The work of the amin should be checked by the Deputy Collector or other officer subordinate to him, and at least 20 per cent. of the angles and distances should be tested.

C.—Cadastral or Field Survey.

14. Before an amin is deputed to make the cadastral survey of a village, he should be supplied with—
Equipment of amin.
- (1) Set of written instructions consistent with these instructions prepared by the Deputy Collector to suit the special circumstances of the area under survey.
 - (2) An order signed by the Deputy Collector authorising him to survey the village.
 - (3) The necessary equipment (*vide* Appendix E of the Board's Survey and Settlement Manual).
 - (4) A skeleton map of the village as prepared by the traverse surveyor on the scale of 16 inches to the mile, or such other scale as may be adopted.
 - (ii) The amin will compare his chain daily with a standard laid down in the village under survey in order to keep it correct.
 - (iii) The amin will prepare note sheets on which he will note any point on which orders may be required or other matter, and the Deputy Collector will write orders on these sheets at the time of inspection.
15. The offset system of survey, as described in paragraphs 14 to 19, chapter 6, Part II, page 39 of the Survey and Settlement Manual, should be followed in partitions of large estates. In smaller estates the plane table system of survey may be followed.
16. On arrival at the village the amin will present his parwana to the landlord's agent and request him to arrange for the attendance of people to point out boundaries of fields. In case of obstruction he shall submit a report to the Deputy Collector.
17. Before commencing the actual survey of fields, the amin should cut up the village into quadrilaterals of from 10 to 14 gunter's chain sides. For this purpose he will run straight lines on aligned flags from one traverse station to another or to intermediate stations selected by him. When measuring the sides of these quadrilaterals, the points and distances at which field boundaries cross the lines should be carefully noted on a rough sketch, and the intersections be marked on the ground. This rough sketch is called the khaka, and the measurements so made should be afterwards plotted on the map. The whole sheet will then be divided into quadrilaterals, and accumulation of error by building up field upon field will be obviated.
18. Except along the traverse and quadrilateral lines, no measurements are to be recorded. During the survey of fields all work is to be plotted on the map at once.

19. The unit of field survey is an area of which the ownership is separate and the occupant is separate. Each parcel or block of land lying within the same exterior boundaries in the occupation of one person under one title or of several persons holding jointly, should be mapped as a separate survey number. Uncultivated land should, however, generally be numbered separately from a contiguous plot of cultivated land.

When a survey and record-of-rights has been previously prepared by Government for the tract under partition, the amin must show on the map in red ink on each plot the number which was assigned to it or under which it was recorded in the previous survey.

20. The amin is to survey separately every plot which is pointed out to him as a separate field if it falls within the above definition. It will often be found that what is pointed out as one field contains several subdivisions made by *aills* for purposes of irrigation or cultivation; such subdivisions of fields need not be separately measured. The amins will show on the map every field boundary which is on the ground in firm lines. If there is no field boundary visible on the ground, as in rice lands under water, the boundaries will be shown by broken lines.

21. The village site is to be surveyed in detail. All houses, gardens, homesteads, and roads, within it are to be surveyed, and numbered. If necessary, the village site is to be surveyed on a large scale, and shown on the margin of the map.

If there are obstructions from jungle or otherwise, it will be necessary to triangulate with the chain. In a very close village it is only by the use of the sight-rule and the prismatic compass, that the details within the village can be plotted. Experienced amins should be employed in this work.

22. Garden plots and homesteads in village sites are to be surveyed and numbered separately from houses. Houses, not temporary huts, with their compounds when they occur in fields outside the village site are to be separately mapped, but unless the compounds are cultivated, one number is to be given to both house and compound.

23. Roads and large permanent footpaths are to be surveyed and separately numbered, whether they run through cultivated or waste lands.

D.—Preparation of the Record.

24. Before commencing the writing of the record the Deputy Collector shall, with the approval of the Collector, prepare instructions for record-writing consistent with the instructions hereinafter laid down and suited to the special circumstances of the tract under survey.

25. The khasra is to be written on the field in the language of the district. It will usually be convenient to defer writing it until the map is completed or at least one subdivision of the village, and until the map has been checked.

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26. In instruction 20 above it is directed that every field boundary other than *ails* or irrigation embankments, which appears on the ground should be plotted. If the fields plotted without the *ails* are very large, it may be necessary to plot some of the *ails* in order to assist the identification of the field. In preparing the record it will be possible to reduce the number of plots so shown in the following way:—When several contiguous plots held by a tenant with no differences of tenure, rent, or soil are found to have been separately plotted, the amin will, at the time of writing the record, leave the outer limits of the block of plots untouched, but will cross out the pencil lines which divide the inner plots on the map with short pencil dashes. When the map is inked up, a firm line will be drawn round the outer limits of the block of fields, and the intermediate lines, if any, will be shown by dots.

27. While the writing of the khasra proceeds, extracts therefrom, known as parchas, shall be prepared in the same form as the khatian, and shall be distributed to the occupants of the lands entered in the khasra, in order that they may be informed from the first as to the entries which are being made in the records.

28. In filling up the khasra if there is any dispute as to any entry, such as name of estate, proprietor or landlord, tenant, &c., the column is to be left blank, and the particulars of the dispute are to be entered by the amin in a separate dispute list.

29. The dispute list may be in the following form, and should be of the same size as the khasra forms:—

- (1) Number in khasra.
- (2) (a) Name of first party, his father's name and residence.
(b) Name of second party, his father's name and residence.
- (3) Summary to be written by the amin in the shortest language as e.g., "as to occupancy."
- (4) Entry declared by the Deputy Collectors to be accepted for the purposes of the partition, and signatures of parties in case of compromise.
- (5) Remarks.

30. *Column 2 of the khasra.*—In this column will be entered the name of the occupant of one field on each of the four sides of the field surveyed. It will not be enough to enter "east of the preceding field." The boundaries should be given as follows:—

North	... A B's field.
South	... C D's "
East	... E F's "
West	... This rayat's field, number so and so.

31. *Column 3* will contain the name of the proprietor according to the khewat. If any field is in the sole ownership of any proprietor, the name of such proprietor should be entered in this column with an explanation of his sole interest.

32. *Column 4* will contain the name or any intermediate tenure-holders between the proprietor and the raiyat. The character of his interest, if it is extensive, may be recorded in a form of khewat.

33. *Column 5*.—The name of all co-sharers, if any, will be entered, as well as the name of the principal raiyat. If the raiyat in occupation of the land is not recognized in the landlord's office, a note will be made of the fact in the column of remarks.

If any land is occupied by the proprietor, or by any rent-free holder, the name of such occupant will be entered in column 5.

34. *Columns 7 and 8 :—Area*.—The Deputy Collector, subject to the approval of the Collector, will decide in what standard areas are to be recorded. Areas are usually worked out by the use of the area comb, or talc squares, except in the case of measurements by chain and compass. If possible, areas should be worked out in the field, but if this delays work, it may be done in office. The extraction of areas by the use of the area comb should be carefully checked by extracting at least 30 per cent. a second time.

Column 9.—A description of the land will be given in this column as jungle, river, &c.

Column 10 : Remarks.—In this column note should be made of any special source of income, as from trees, shops, &c.

35. In the khatian the classes of occupants will be arranged in the following order :—Proprietors, tenure-holders, raiyats, lands unoccupied.

The lands entered against each class of occupant will be totalled, and the whole total shall agree with the total of the khasra.

36. *Column 3 of the khatian*.—In this column it should be stated whether the land is rent-paying or not, and if not occupied, the description of the land. The tenants need not be classified into tenants at fixed rates settled and no occupancy tenants.

37. The games of under-raiyats are not to be entered in the khatian unless specially ordered by the Collector.

38. The entries of existing rents will be filled in by the amin from the copy of the rent-roll of the village as filed by the proprietors, and will, if the Deputy Collector so orders, be verified from the raiyats during record-writing.

39. Lands which are not rent-paying and which are not held by tenants will be entered in the khatian, and any assets of such lands will be entered in the column provided for the purpose.

40. The khasra, khewat and khatian shall ordinatily be prepared in the forms given in Appendices C, D, E, but these forms may be modified by the Collector to suit the local conditions of different areas under survey.

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E.—Testing the measurement and checking the preparation of the record.

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41. The measurements of the amins are to be checked by the Deputy Collector or officer deputed by him while the measurement is in progress. He is to run lines across the map as plotted, and will note if the field boundaries intersected agree with those shown on the amin's plotted map all such lines are to be shown in coloured ink on the map, and are to be signed and dated.

He is also to check the measurement of at least one quadrilateral in every sheet. The amin should not ink in his work till it has been tested and passed.

42. An independent check may also be carried out. An independent check is made by a field-book measurement of particular lines across a village, which are plotted on tracing-paper and compared with the plotted sheet after field-survey. These independent checks should amount to not less than 40 chains in every 320 acres.

43. When measurements are made by any system other than that described above, the Deputy Collector should measure 5 per cent. of the fields in different parts of the area surveyed, and thus test the measurement.

44. While the record-writing is in progress, the Deputy Collector or officer deputed by him should visit the village and test it. He should test at least 10 per cent. of the entries in the khasras, and the Deputy Collector may at the same time dispose of disputes, subject to further objection under section 47.

45. The Deputy Collector or other officer testing the record-writing should initial in the khasra all entries which he has tested, and should, where possible, correct mistakes on the field.

• APPENDIX A.

FORM OF PARTITION PAPER.

(Rule 9).

1. Names of proprietors.
2. Quantity of land in parent estate.
- 3a. Rental as shown by landlord.
- 3b. Do. as admitted by raiyats.
4. Rental as taken for the purposes of partition.
5. Other assets, if any.
6. Sadar jama of entire estate.
7. Fractional shares of each set of proprietors or villages held in severalty by each or shares in such villages.
8. Names of each set of proprietors.
9. Quantity and specification of land assigned to each estate formed by present partition.
10. Rental and other assets, if any, assigned to each.
11. Jama of each separate estate and tauki number.
12. Any stipulation regarding places of worship, tanks &c., under Chapter IX.
13. Date of confirmation by Commissioner.
14. Date from which partition has taken effect and separate liability has commenced.
15. Remarks.

If a partition paper has been prepared by arbitration under section 53, and no survey has been made, the above statement shall be prepared with the necessary modifications.

In order to specify the land assigned to each estate, *vide* item 9 above, reference will be made to the village or Subdivision of a village and to the khasra numbers so far as such reference is necessary.

FORM I.

(Instruction 1, Rules 1 and 2.)

II. I.—Statement showing the estimated cost of partition to be levied under section 37 (1) of the Estates Partition Act, V. of 1897.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Number of the estate in register.	Name of estate.	Registered proprietors.	Government revenue.	Area by survey, or, if the district has not been surveyed, the estimated area.	Name of estate and revenue at the period of the decennial settlement.	Petitioner's name.	Shares into which it is at present proposed to divide the estate, with the names of the respective proprietors.	Number of officers and annuists to be employed and time likely to be taken up in measurement and other proceedings under section 45.	Rate of pay, and total cost of establishment shown in column 9.	Yearly and total cost of other establishments employed under section 35.	Yearly and total cost of contribution towards district establishments employed under sections 36 and 41 (3).	Yearly and total cost of contribution towards divisional establishments employed under section 36.	Other expenditure likely to be incurred (if any) in detail.	Total estimated cost of partition (columns 10 to 14).	Apportionment of cost to each proprietor.	Instalments and interest which it is proposed to levy the cost.	REMARKS.

FORM 2.

REV. CIR.

(Instruction 1, Rules, 6, 7 and 8.)

JULY 1899.

Form of notification under section 47 of the Partition Act, 1897.

Notice to the proprietors, landlords, tenure-holders, raiyats and under-raiyats of—

Village
Pargana
Thana

District
Estate
Tauzi No.

Take notice that under the powers vested in me by the Estates Partition Act, 1897, and the rules made thereunder, I shall on the _____ day of _____ at _____ proceed to attest the survey papers and record of existing rent and other assets.

You are hereby required to attend before me at the abovementioned time and place or at any other time and place to which the proceedings may be adjourned, and to produce before me such evidence, oral or written, as you may have to offer in connection with the proceedings.

FORM 3.

(Instruction 3, Rules 6, 7 and 8.)

Form of summons to procure attendance for the purpose of making entries or attesting entries in the records.

In the Court of the Deputy Collector at _____
Whereas your attendance is required to _____
you are hereby required to attend before me or such officer as I may
depute at _____ (hour) _____ on the _____ (date)
at _____ (place) _____, and to bring with you _____
(here state document)

If you fail to attend as ordered, you will be liable to fine and imprisonment under section 170, Civil Procedure Code.

JULY 1899.

FORM 4.

(Instruction 2, Rule 9.)

Register of Stamp duties levied on Partition Cases disposed of during the year 189

Serial number.	Name of estate, with pargana and tauli number.	Total assets.	Deduct Government revenue.	Net profit.	Market value of net profit at 20 years' purchase.	Total stamp duty.	Name of proprietor.	Amount of proportionate share due from each proprietor.	Initials of Deputy Collector to the effect that the figures entered in columns 7 and 9 have been correctly calculated.	Paid in stamp (in this case note the number and date of petition, Register 27.)	Paid in cash (in this case note the number and date of accountant's chalan.)	Initials of Deputy Collector to the effect that the entries in columns 11 & 12 have been compared by him and are correct.	When paid in cash, date of affixing stamp to record and Deputy Collector's initials.	REMARKS.	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
		Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.		Rs. A. P.							

FORM 5.—GENERAL NOTICE.

REV. CIR.

(Instruction 2, Rules 10 to 19.)

JULY 1899.

To

All occupants of lands in village . . . , pargana . . . district . . . , and to all persons dwelling in villages whose boundaries are conterminous with this village, and to all persons employed on, or connected with, the management of, or otherwise interested in, such lands. It is hereby notified and proclaimed that under section 45 of the Partition Act, V (B. C.) of 1897, a survey shall be made and a record of existing rents and other assets of all the lands shall be prepared of estate No. . . . This is, therefore, to give notice that the demarcation and survey of the land in the village above stated will commence on the . . .

. . . , and you are hereby called upon to attend, either personally or by agent, on the officer engaged to conduct the work at such times and places as shall be stated hereafter in special proclamation to be published in the villages in which the lands to be surveyed lie. You will then point out the boundaries of all lands belonging to your respective estates, tenures and holdings, and render such aid as may be necessary in setting up or repairing such marks as may be required; and you will afford such assistance and information as may be required of you for the purposes of the Act. You should, therefore, be prepared to point out all the lands mentioned therein as belonging to your estates, tenures and holdings in each village of which you are in actual possession; and also be prepared to give the necessary information in respect of those which are no longer in your possession.

FORM 6.—SPECIAL NOTICE.

(Instruction 3, Rules 10 to 19).

To

. . . , proprietor or manager or agent on behalf of the proprietor of estate No. . . . , village . . . , pargana . . . , district . . .

It is hereby notified in continuation of the general proclamation . . . , dated the . . . , that (the undersigned or whoever may be sent) will proceed to the demarcation of the undermentioned village on or about the dates specified below: and this is to give you notice that you must attend personally or by agent for the purpose of pointing out the boundaries of all lands belonging to your estate situated in such village, and of rendering all aid that may be necessary in setting up or repairing boundary marks and of affording any assistance or information which may be needed.

NOTE.—If this notice is issued to a tenant, to require his attendance to point out his lands or give other information, it must be altered accordingly.

This Notice may, in the first place, be issued generally on the proprietors or occupiers of land in the village.

[illegible]

REV. CIR.

JULY 1899.

APPENDIX E. **FORM OF KHATIAN.**

(Instruction 40, Rules 10 to 19.)

• Village
Pargana
Thana
District

Estate
Tauzi No.

Names of proprietors and tenure-holders with reference to the khewat.

Serial number of khatian.	Name, parentage, caste and resi- dence of tenant.	Character of interest of tenant or description of land not held by tenant.
1	2	3

EXISTING RENT OF RENT-PAYING LANDS—			Assets, if any, of lands other than rent-paying.
As stated by the landlord.	As stated by the tenant.	As taken by the De- puty Collector for the purposes of the partition.	
4	5	6	7

LANDS.

Khasra number.	Boundaries.	Area.		REMARKS.
8	9	10		11

II.

GENERAL INSTRUCTIONS.

1. (a) Establishments of a fixed nature, that is to say, establishments that will be required for a term exceeding 12 months, require the sanction of the Commissioner.

(b) Temporary establishments may be sanctioned by the Collector: provided that such charges shall not exceed the provision made in the estimate sanctioned under Instruction No. 1, rules 1 and 2.

2. Appointments to posts on duly sanctioned fixed establishments shall be made as follows:—

(a) To posts of which the remuneration is not above Rs. 100, by Deputy Collectors subject to the approval of the Collector.

(b) Above Rs. 100 and not above Rs. 200, by Commissioners.

(c) Above Rs. 200, by the Board with the sanction of Government.

3. In appointing establishment under section 35 of the Act, a sufficient establishment to complete the work of survey and record-writing in six months should ordinarily be appointed; but in cases where this period will not be sufficient, the establishment should be appointed with reference to the following scale which is fixed as the maximum for an area of 20 square miles to be completed in six months:—

		Per mensem.
		Rs.
1	Inspector at	40
10	Amins „	30 each
20	Chainmen „	6 „
10	Coolies „	4 „
4	Chainmen and messenger for the	
	Inspector at	6 „
	Contingencies at	2 per amin.

4. For the purpose of proceedings under Chapter VI of this Act, a sufficient establishment shall ordinarily be appointed to complete the measurement and preparation of the record in six months. If this period be not sufficient, the establishment to be appointed shall be subject to the sanction of the Commissioner.

5. As a general rule, amins appointed to make measurements in partition cases must be qualified by the production of a certificate from a survey school or the head of a professional survey party. It should always be possible to procure amins possessing this qualification in Bihar, Orissa, and the districts of Eastern Bengal, in which there have been professional survey on a large scale. Amins not possessing such a certificate are not to be employed without the special sanction of the Commissioner.

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6. Amins should, as a rule, work at contract rates. The rates to be paid to amins should be so fixed as to allow them not less than Rs. 30 per mensem, exclusive of the wages of chainmen and coolies, and of other contingent charges. For this remuneration, an amin will ordinarily be expected to survey and prepare the measurement papers of 200 acres a month. For other work connected with partitions, such as enquiry into objections, the remuneration to be allowed should be, as nearly as possible analogous.

7. In the case of petty estates, such as would occupy an amin less than a month, the Collector may, at this discretion, allow the amin a rupee per diem.

8. In reckoning the remuneration of an amin, a reasonable time must be given for going to and from the estate.
 Reckoning of remuneration.

9. No inspecting officer or amin shall be appointed for the purpose of making measurements under the Act without the sanction of the Commissioner, unless he is qualified to make a survey with the plane-table.
 Qualifications of staff for survey.

10. Officers employed to supervise or check the work of amins must always be qualified as amins, and should ordinarily have acted as amins in practical surveys.
 Qualification of inspecting officers.

11. Deputy Collectors shall provide for the supervision of the progress of work by requiring the submission of progress reports from the officers employed under them in Form (1), Appendix F.
 Control of survey staff.

12. Before an amin is deputed to make measurements, the Collector or Deputy Collector shall prescribe the time within which the measurement or any portion of it is to be completed. The form of Progress report is indicated in the preceding instruction.
 Progress reports.

13. The whole remuneration of an amin should not be paid to him until his papers have been examined and passed as correct. The officer in charge of the partition should see that the amin is not permitted to remain on the estate without reason or make unnecessary delay in filing his papers. Advances not exceeding two-thirds of the remuneration earned may, from time to time, be given, at the discretion of the Deputy Collector. He will be responsible for seeing that no unreasonable delay occurs in examining the amin's work and settling his accounts.
 Advances to be granted.

The same rule applies, *mutatis mutandis*, to Inspectors and other officers.

14. Whenever a professional or other trustworthy survey or record-of-rights has been made, the Collector will see that it is utilized as provided in section 49. He will also bear in mind that whenever a record-of-rights and settlement of rents have been made, these are binding on all parties so long as they are in force, and must be accepted as the basis of partition. In such cases it may be necessary to bring the records up to date and to assess for the purposes of the partition such lands of the estates as have not been assessed by the Settlement Officer.
 Survey records to be utilized.

15. The abstract of the Estates Partition Fund required by section 42 (6) shall be submitted in Form (2), Appendix F. REV. CIR.

JULY 1899.

16. Early in April of each year the Commissioner will prepare an account of the total actual expenditure incurred during the last official year on account of the butwara establishment entertained in his office, and apportion it among the several districts in his Division, and will communicate these figures to the district officers concerned for insertion in their Partition Fund accounts, and abstract annual statements of Partition Fund, with a note that the amount was drawn by him direct from the treasury. Copy of this account will also be furnished to the Accountant-General, Bengal, for adjustment of the Partition Fund accounts of each district in his office.

17. The charges on account of partitions in districts where an Estates Partition Fund has been formed may be levied according to the estimate in each case as provided in sections 37 and 38, subject to final adjustment under section 40, or where a general scale of fees has been fixed by the Board of Revenue under section 42 (2), according to the scale of such fees.

18. In every district in which any estate is under partition, a ledger in Form (3), Appendix F, shall be maintained by the Collector, which shall show the receipts and disbursements of each estate.

19. From the Estates' Ledgers a general register of receipts and disbursements on account of the Estates Partition Fund when such fund has been formed under section 42, shall be maintained in Form (4), Appendix F, in which all receipts and expenditure on account of the whole district shall be entered.

20. At the close of each financial year, the District Collector should submit, through the Commissioner, to the Board, a statement in Form (5), Appendix F, showing the expenditure incurred and the average cost per acre of the land partitioned in the district.

21. All notifications under this Act shall be published, and all notices shall usually be served (except such as are served by post) by means of the nazirs' peons, fees being charged on the scale prescribed for the service of execution processes and denoted in the usual way by adhesive stamps.

22. Before publishing a notification under section 21, the Collector may require the proper amount of fees to be paid by the applicant. If the application is admitted under section 29, the fees thus paid will be included in the expenses of partition, and the expense incurred in the publication of this notification and service of this summons should be taken as a basis for the calculation of the expense to be incurred on account of the other notifications and notices which are required by the Act.

23. A progress form to show the disposal of partition cases shall be submitted every quarter in Form (6), Appendix F.

INSTRUCTIONS.

REV. CIR.

[JULY 1899.]

23. In order to check the realisation of partition fees, a return shall be prepared in the form annexed (No. 7 of Appendix F), which shall be submitted to the Board with the statement prescribed by instruction 20.

25. A partition case will be kept upon the Collector's file—

- (i) until any appeal against the proceedings of the Revenue officers has been decided, or until three months have elapsed without any order being made under section 116;
- (ii) until the date prescribed in the notice under section 94 for the commencement of separate liability has elapsed and the Tauzi Navis has certified that the joint estate is not in arrears or, if in arrears, until the arrear has been recovered;
- (iii) if any expenditure has been incurred in the construction of boundary marks under section 96, until the cost of erecting such boundary marks has been recovered.

On these three conditions being fulfilled, the partition will be treated as completed and the case removed from the file.

26. The law (section 88) appears to contemplate that objections to the effect that lands under division do not form part of the parent estate will be made before the Deputy Collector proceeds under section 57 to determine how the lands of the parent estate shall be partitioned. It is possible, however, that objections worthy of consideration may be made at a later stage; but such objections should not be entertained after a partition has been finally confirmed under section 93. The objectors should be referred for their remedy to the Civil Court.

27. With a view to ensure the personal attention of Revenue officers to the proper making up of the record of a partition case, and to enable them to see at once the progress of every such case from its institution to its close, an order-sheet shall be attached to each record. See Board's Circular Order, Appendix G, No. 1.

28. All partition cases shall be entered in Register No. 2, Form 8, Appendix F. Column 19 is provided for the tauzi number of the new estates, and Collectors should see that this column is properly filled up, after communicating the necessary information to the Land Registration and Tauzi Departments.

29. The numerous forms of notices &c., in use in partition proceedings are not printed and supplied by the Superintendent of Stationery. It has been ruled that, as a partition pays its own expenses, the notices, &c., should be issued in manuscript, the cost being met in the same way as other charges connected with partition. As it is generally within the competency of a Commissioner to sanction any partition charge, Commissioners are authorised to have the forms printed at a local press, apportioning the expenditure to all the estates under partition. Many of the forms given in Appendix G must be required in all partitions. The adoption of these forms is not ordered by the Board, but it is probable that they will be found useful.

APPENDIX F.

REV. CIR.

FORM (I).

[U.L.V 1899.

FORM OF PROGRESS REPORT.

(GENERAL INSTRUCTION II.)

Weekly Progress Report of _____ for week ending _____

Nature of work, e.g., whether demarcation, surveying, preparing map or records, preparing partition paper or final report, or delivering possession.

[illegible]

REV. CIR.

FORM (2).

JULY 1899.

(GENERAL INSTRUCTION 15.)

*Abstract of the Partition Fund of District , for the
year , prepared as required by section 42 of
Act V (B. C.) of 1897.*

Receipts.

Rs. A. P.

Balance in hand on 1st April 189

...

...

Received on account of estate

Total

...

Disbursements.

Rs. A. P.

Contribution towards establishments employed in the
Commissioner's Office under section 36 of the Act.Salary of Deputy Collector employed under section 41
of the Act.Salary of district establishment employed under section
36 of the Act.Costs of establishments employed under section 35 of
the Act.Pension and allowances { 1. Of gazetted officers. ...
2. Of other officers ...

Contingent expenditure

Cost of stamps

Cost of audit

Cost of boundary marks

Balance in hand on 31st March 189

JULY 1899.

FORM (5.)
(GENERAL INSTRUCTION 20.)

RETURN XXVIIA.

Statement showing the expenditure incurred and the average cost per acre of the land partitioned in the district of _____ for the year ending 31st March 189 _____

[illegible]

* This "number" is to show only those estates of which the partition is concluded during the year under report, whether the partition was commenced in that or any previous year.

† The total cost will include all expenditure incurred from the beginning to the end of each case.

‡ This "average" is to be calculated from columns 4 and 5.

*Statement showing the progress made in the disposal of Partition Cases
in the district of during the quarter ending
189 and two preceding quarters.*

JULY 1899.

	Quarter ending	Quarter ending	Quarter ending
1	2	3	4
(1) Number of cases at the beginning of the quarter ...			
(2) Institutions ...			
(3) Number of cases disposed of by the amil ...			
(4) Number of cases disposed of by the Deputy Collec- tor, <i>i. e.</i> , submitted to the Collector for approval of the partition ...			
(5) Number of cases returned by the Collector to the Deputy Collector for any reason whatever ...			
(6) Number of cases disposed of by the Collector, <i>i. e.</i> , submitted to the Com- missioner for confirma- tion ...			
(7) Number of cases confirmed by the Commissioner ...			
(8) Number of cases finally disposed of by the Com- missioner, <i>i. e.</i> , struck off the file ...			
(9) Number of cases pending at the close of the quarter ...			

JULY 1899.

FORM (S).

[GENERAL INSTRUCTION 28.]

Register No. 2 of proceedings for the partition of estates under Act V (B. C.) of 1897.

NOTE.—If the partition is rejected under section 20 or 22, or if it is quashed by the Commissioner under section 34, or if it has been arranged by arbitration under sections 51 to 56, the fact should be noted in column 3.

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20																																																																																																																																																																												
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Name of estate and its number on the roll.																																																																																																																																																																																															
Former revenue of the estate.																																																																																																																																																																																															
Name of the applicant for partition.																																																																																																																																																																																															
Names of the co-parceners and extent of their respective shares.																																																																																																																																																																																															
Area in acres of property to be divided.																																																																																																																																																																																															
Date of presentation of application to Collector, section 17.																																																																																																																																																																																															
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Number and description of shares into which the partition is to be made, sections 18 and 30.																																																																																																																																																																																															
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All other costs declared by Collector under section 40 or other sections as chargeable to the estate.																																																																																																																																																																																															
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Date of confirmation of partition by Commissioner, section 90 or 91.																																																																																																																																																																																															
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JULY 1899.

FORMS.

No. I.

Circular Order No. 6 of January 1889.

WITH a view to ensure the personal attention of Revenue Officers to the proper making up of the record of a partition case, and to enable them to see at once the progress of every such case from its institution to its close, the Board direct (as the High Court have directed* by their Circular order No. 13 of 18th July 1877, with regard to regular suits and miscellaneous cases) that there shall be attached to each record an "order sheet" or ruidad. This paper is to contain a note of every hearing, as well as every order made in the case, from the commencement to the close.

THE HON'BLE MR.
F. M. HALLIDAY.

* Pages 304-5 of the
General Rules and Cir-
cular Orders, 1881.

2. The practice of writing orders on petitions, perwanas, or amin's reports, and such like papers is strictly prohibited; orders are to be written on the order sheet only, excepting final decisions. On every petition, return or report requiring an order to be made upon it, there is to be entered at the head thereof a note of the date of the order made and no more; the order and the reasons for making it, when any require to be recorded, are to appear only in the order sheet. Nothing is to be written on any application except the Register number of the case, the date of filing and a reference to the order sheet. If any person to be examined is present in office, an order for examination is unnecessary; but the fact of such examination is to be noted in the order sheet.

3. On the case being called on for hearing, if there are any witnesses in attendance, a note of the fact is to be entered in the order sheet, and as the witnesses are called, their names are to be shown there. If evidence taken under a commission is read, this fact, with the name of each witness, is also to be noted. A similar note is to be made when the return of an amin is read.

4. There is likewise to be a note of all documentary evidence used at the hearing, giving the numbers of the documents used by each party. There is to be one series of numbers for the whole; those of the party who has the right to begin commencing from No. 1, and those of the other parties following in regular order.

5. The final order in the case is not to be written *in extenso* in the order sheet, but the making of it is to be noted. The same course is to be adopted if there is any subsequent application for review.

6. The order sheet may be written by the clerk at the dictation of the presiding officer, and each order, when recorded, is to be signed by the presiding officer, who is to be responsible for the correctness of the entry signed. It is to be kept in charge of the same officer who has the custody of the record, and at the conclusion of the case is to be permanently attached thereto.

7. Orders of the kind frequently made such as *misl shamil* and the like should never, or very rarely, occur,

8. Appellate Courts are to be guided by the spirit of these rules in making up the appeal record. REV. CIR.

9. The order sheet (which is to be in the following form) is to have columns ruled off to the right and left—one for the date and the other for the signature of the presiding officer :— JULY 1899.

Order sheet, dated from	to	No.	of 18
Partition of mahal	Tauzi No.		District
Applicants for partitions.		Non-applicants.	
Serial number of order	Date	Order	
Signature.			

FORMS.

(GENERAL INSTRUCTION 29.)

No. 2.

APPLICATION FOR PARTITION.

[See Section 18.]

TO THE COLLECTOR OF

1. Name and residence of applicant.
2. The name of the parent estate.
3. The number under which such estate is borne on the revenue-roll, and the land revenue demand for which it is liable.
4. The number under which such estate is borne on the Collector's General Register of revenue-paying lands.
5. The name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post-office of the area within which each of the said proprietors resides.
6. The character and extent of the interest of which each proprietor of the parent estate is in possession.
7. A specification of any land held by proprietors of the parent estate in common with proprietors of other estates, and of the rights of such proprietors respectively in such land.
8. The name and address of the proprietors of the estate or estates surrounding the estate which is proposed to be partitioned, the name of the post-office of the area within which each of the said proprietors resides, the name and number of the estates owned by them.

9. Remarks.

I do declare that this application under section 18 of Act V. (B. C.) of 1897 is correct to the best of my knowledge and belief.

REV. CIR.

No. 3.

JULY 1899.

NOTICE.

TO PRODUCE RENT-ROLL AND STATEMENT.

[See Section 19.]

Collector's Office.

To

OF

WHEREAS has applied for the partition of his share
of this district under Act V (B. C.)
 in estate No. named
 of 1897, and is unable to produce a rent-roll or statement of the rents
 collected from such estate on behalf of the applicant during each of the
 three years immediately preceding, as required by section 19 of Act V
 (B. C.) of 1897, and has stated that you have in your possession the
 information necessary for the preparation of such rent-roll and statement,
 you are therefore required to produce such rent-roll and statement on
 the day of 18. Herein fail not.

Collector.

No. 4.

PROCEEDING ON RECEIPT OF APPLICATION.

[See Section 21.]

IN THE

COLLECTORATE.

On the 18 corresponding to 12 Fasli
 Esq., Collector, present.

Partition of land and separation of revenue of mahal, pargana
 district, under Act V (B. C.) of 1897, on the
 application of applicants for partition of the said mahal
 tauti No.

Whereas it is necessary that a notification should be published, and
 that notices should be served under section 21 of Act V (B. C.) of 1897
 before the 18 it is ordered that copies of
 the notification with copies of this proceeding be sent to the Judge of
 and Munsif of, with the request that they will be good
 enough to order their nazirs to have these notices hung up at their
 Courts, and will intimate to this Court that they have done so,
 and that three copies of the notification be made over to the
 nazir of this Court to be affixed, one on the front of this Court, and
 the second on the mahal to be partitioned, and the third in the zamindari
 cutcherry of the mahal, and their service reported to this Court and a
 copy of the notification with a parwana be sent to the police-station where
 the mahal is situated, that it may be affixed on the police-station, and a
 report submitted to that effect before the expiry of the date, and that,
 under section 21, Act V (B. C.) of 1897, a notice be served by the nazir
 of this Court on such of the recorded proprietors of the estate as shall
 not have joined in the application, and on any other proprietor who may
 have been named in the application, and receipts taken from them and
 filed in this Court.

No. 1

REV. CIR

NOTIFICATION ON THE APPLICATION.

JULY 1896

[See Section 21.]

THE COLLECTORATE OF

BE it known that the undermentioned persons have applied for the butwara of mahal No. Pargana . Therefore under this day's order this notification under section 21 of Act V (B. C.) of 1897 is published, and any person claiming any proprietary right in the estate who may object to the partition is invited to state his objection either in person or by duly authorized agent on

Name of applicant.

No. of tauzi.

Name of mauza and pargana.

Extent of share.

Dated

Collector.

N. B.—The Collector is to cause copies of this notification to be published in the manner prescribed in section 104.

No. 6.

NOTICE TO PROPRIETORS.

[See Section 21.]

THE COLLECTORATE OF

To

BE it known that the undermentioned persons have applied for the butwara of mahal No. , pargana . Therefore under this day's order you are hereby informed, under section 21 of Act V (B. C.) of 1897, that if you have any objection to the share of the applicant, you should state your objection either in person or by duly authorized agent on

Name of applicant

No. of tauzi

Name of mauza and pargana

Extent of share

Date

Collector.

N. B.—Copies of this notice are to be served in the manner prescribed by section 105 on such of the recorded proprietors as shall not have joined in the application and on any other proprietor who may have been named in the application.

REV. CIR.

No. 7

JULY 1899.

PROCEEDING DECLARING ESTATE TO BE UNDER PARTITION.

[See Section 29.]

IN THE

COLLECTORATE.

WHEREAS
has applied for the partition of his share in estate No. name of
of this Collectorate and

and there is no reason to believe that any obstacle exists to making the partition as applied for, it is therefore directed under section 29 of Act V (B. C.) of 1897 that the application be admitted and the estate declared to be under partition for the purpose of forming and assigning to the applicant a separate estate. The particulars of the extent of interest in the parent estate held by the applicant (or joint applicants) are as follows :—

It is ordered that the lands proportionate to the interest declared to be held by each applicant (or body of joint applicants) shall be formed into a separate estate to be assigned to such applicant (or body of joint applicants) and that lands proportionate to the interest so declared to remain to the recorded proprietor (or the number of recorded proprietors who are not applicants) shall be left forming a separate estate.

Date

Collector.

No. 8

NOTICE TO PERSONS INTERESTED.

[See Section 34.]

THE OFFICE OF THE COMMISSIONER OF

To

WHEREAS it appears that sufficient reason exists why the partition of estate No. borne on the revenue roll of the Collectorate should not be proceeded with, you are hereby required, under section 34 of Act V (B. C.) of 1897, to show cause within from the date of the service of this notice why the partition case should not be struck off the file.

Date

Commissioner.

No. 9.

V C R.

NOTIFICATION

JULY 1899.

OF COMMENCEMENT OF THE BUTWARA.

[See Section 47.]

THE

COLLECTORATE.

WHEREAS the Collector has made an order under section 29 declaring the estate to be under partition, it is now notified under section 47 of Act V (B. C.) of 1897 that it is intended to proceed with the partition. All the proprietors of the estate are therefore required to produce before , either jointly or separately, copies of their rent-rolls and statements of the rents collected during each of the three years next preceding, and also copies of any measurement-papers of the estate which may be in their possession.

Date

Deputy Collector.

No. 10.

NOTICE

OF DATE FOR CONSIDERATION OF THE PARTITION.

[See Section 53.]

THE

COLLECTORATE.

To

P.P.P.

Proprietors of mahal

, pargana

, zilla

THE records of the butwara of mahal

, pargana

, zilla

, having been received from the Deputy

Collector for sanction under section 58, Act V (B. C.) of 1897, you are hereby informed that if you have any objection to the proposals made by the Deputy Collector in the butwara you will either personally or by an authorized agent file the objection on , and that in default of your doing so no objection will be heard after the expiry of the fixed time, and the arrangement proposed by the Deputy Collector will be sanctioned.

Collector.

REV. CIR.

JULY 1899.

No 11

NOTICE

TO PROPRIETORS, &c., TO TAKE EXTRACTS.

[See Section 59.]

THE

COLLECTORATE.

To

Proprietors of mahal

, pargana

, illa

as directed by this office, the amin has submitted the papers ; therefore, under section 59 of Act V (B. C.) of 1897, you are hereby called upon to take out from my office the extract of the portion of the partition paper relating to your separate estate. Herein fail not.

Collector.

No. 12.

NOTICE .

TO THE RECORDED PROPRIETORS.

[See Section 61.]

THE

COLLECTORATE.

To

Proprietors of mahal

, pargana

, district

THE records of the butwara of mahal having been sanctioned in this office, you are, therefore, hereby informed under section 61 of Act V (B. C.) of 1897 that they will be at once submitted to the Commissioner, and you should file any representation or objection you may wish to prefer in respect of the partition made within 30 days from receipt of this notice.

Collector.

Dated

No. 13.

NOTICE

OF PAYMENT IN REDEMPTION OF RENT.

[See Section 70.]

THE

To .

WHEREAS the dwelling-house of with has been included in the separate estate assigned to you from the parent estate , District , and the annual rent to be paid in perpetuity in respect of the land occupied thereby has been fixed by the Deputy Collector and stated in the paper of partition, and the proprietor thereof has applied for permission to redeem the annual rent so fixed, and permission has been given him, and the said proprietor has paid Rs. , being the certified amount payable by him in redemption of the annual rent, you are hereby informed, under section 70 of Act V (B. C.) of 1897, that the sum will be paid to you or to your authorized agent on application, and that from the date on which possession may be given, the said proprietor, who has redeemed the rent of such land, will be entitled to hold such land as a rent-free tenure secured against you and against any auction-purchaser at a sale for arrears of revenue including the Government, and that from such date the lands shall be so held as a rent-free tenure.

No. 14.

NOTICE

TO PROPRIETORS, &C., TO ATTEND.

[See Section 74.]

To

Proprietor of

WHEREAS it has been decided to draw lots in respect of your share which is to be separated from the parent estate , No. , district , you are hereby required, under section 74 of Act V (B. C.) of 1897, to attend at the office of Deputy Collector of in person or by authorized agent on 18 for the purpose of drawing lots.

Deputy Collector.

Dated

No. 15.

NOTICE OF DATE FOR HEARING CASE.

[See Section 90.]

THE OFFICE OF THE COMMISSIONER OF

WHEREAS the partition proceedings of estate No. 18
 district 18, have been submitted to the undersigned for
 confirmation, and it is necessary to fix a day for hearing and disposing of
 the case, all parties concerned in the case abovementioned are required
 under section 90 of Act V (B. C.) of 1897, to appear before the undersigned
 in person or by authorized agents at 18
 Herein fail not.

Commissioner.

No. 16.

[See Section 90.]

THE OFFICE OF THE COMMISSIONER OF

List of Butwara cases pending for the consideration of the Commissioner under section 90 of Act V (B. C.) of 1897.

Number of the estate on the tauzi.	Name of the estate.	District.	Name of the applicant for parti- tion.	Names of non-appli- cants.	Date fixed for hearing and disposing of the case.	REMARKS.
1	2	3	4	5	6	7

Dated

Commissioner.

No. 17.

NOTICE

OF CONFIRMATION OF PARTITION.

[See Section 93.]

THE

COLLECTORATE.

Notice is hereby given under Section 93 of Act V (B. C.) of 1897 that the partition of the estate has been finally confirmed, as it was sanctioned (or as amended and altered) by the Commissioner.

*Dated**Collector.*

No. 18.

NOTICE.

WHEN AMENDMENTS INVOLVED, OR FRESH EXTRACTS, &C., REQUIRED.

[See Section 93 (2).]

Notice to proprietor of mouza , pargana , zilla .

2. As the partition of mehal as finally sanctioned involves certain amendments which may conveniently be made on the extracts of the partition paper and on the maps which have been prepared and delivered or offered by notice to you. You are hereby required, under Section 93 (2) of Act V (B. C.) of 1897, to produce such extracts and maps, in order that such amendments may be noted on them.

3. As the alterations made in the partition as finally sanctioned are such as make it desirable to prepare fresh extracts and maps, it is hereby declared, under Section 93 of Act V (B. C.) of 1897, that the extract and map which were furnished or offered to you are cancelled, and you are required to take out of this office the fresh extracts and map which have been prepared.

*Collector.**Dated*

18 .

N.B.—Paragraph 2 or 3 is to be retained or omitted according to the circumstance of each case.

No. 19.

ORDER TO AMIN.

[See Section 94.]

THE

COLLECTORATE.

Parwana to, Amin appointed for the partition of
 mehal , bargana , zilla .

WHEREAS the partition of the mehal has been sanctioned by the Commissioner in his letter No. , dated 18 , therefore under section 94 of Act V (B. C.) of 1897, you are to proceed on 18 to the mehal to give possession under the Commissioner's order, and are to submit the papers of giving possession immediately after , and in default of carrying out the above order (*i.e.*, of giving possession within the above time) you will be held responsible, and strict orders will be passed on you, because from each share is to be considered a separate and independent mehal. Herein fail not.

Collector.

Dated

18 .

No. 20.

NOTICE

TO EACH RECORDED PROPRIETOR.

[See Section 94.]

THE

COLLECTORATE.

Notice to

You are hereby informed, under section 94 of Act V (B. C.) of 1897, that the butwara of monza has been sanctioned by the Commissioner of , and possession has been accordingly given. This notice is given to you that from the mehal assigned to you is to be deemed an estate separate from the parent estate, and to be separately liable for the Government revenue of that mehal, *viz.*, Rs. a year, and you are hereby called upon to

attend the office of the undersigned within 15 days, and enter into a separate engagement for the payment of the Government revenue aforesaid.

Collector.

Dated

18 .

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